App. F. IX-4

*Previous References*

File No. 41-20

Serial Nos.

*Later References.*

PRESERVE

# GENERAL AND REVENUE SECRETARIAT.

*Serial Nos.* V40

Part ~~B~~ 1 for February 1940

SUBJECT

Civil Guard Re Establishment April 1941.

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WD 0573—GPB—22,500—12-9-39

PRESERVE

Bob Shankland

Serial No.

Three members of the Kolar Gold Field Mining Board waited on the First Member yesterday to bring to his notice an apprehension of an alleged strike in their area due to certain orders of the Munsiff's Court attaching the wages of the labourers there.

They represented that in spite of the exemption of wages from attachment, the Court was attaching the wages of labourers and was sending out warrants to them for execution. The First Member pointed out that these wages were exempt from attachment under Section 60 of the Civil Procedure Code and that if, as represented by them, the wages that were paid weekly, fortnightly or monthly were attached as a 'debt' under Order 21 Rule 46 of the Civil Procedure Code, this attachment appeared to be wrong. Then they stated that by an arrangement among the money lenders labourers and themselves, they were allowing the attachment of a certain portion of the wages of the latter half of a month and that they had to give effect to the order of the Court and that the labourers have now realised that their wages are exempt from attachment and that they do not like to continue the mutual arrangement existing till now.

They also represented that they have been receiving anonymous letters threatening a strike and that some labourers have also approached them with a threat of strike if no relief was given to them and that they have told the

labourers that they are bound by the order of the Court as much as the labourer and the moneylenders.

In their view certain prominent Advocates and Congress workers like Mr.K.T.Bhashyam are setting up these labourers to resort to strike without putting forward their grievances to the Court. They say that they are watching the situation and that it may or may not lead to strike and that their object in coming on deputation was to keep the Government informed of the situation.

The First Member told them that Government would help them if their difficulties were clearly explained and advised them that in consultation with their legal advisers the exact legal points put forward or likely to be put forward by the labourers may be communicated to Government. The District Magistrate, Kolar, who had mentioned this matter on the 20th instant, would also be asked to send a report indicating his views as to the action if any that could be taken by Government in the matter.

Draft & D.O. for perusal. 25.1.39

Chief Secy) 25/1/39
1st Member
Diwan

The draft may issue (The Diwan has seen the papers)

Issued 25/1/39

The letter was sent through a Special Messenger by the Passenger Train (3rd P.M.)

who for perused
Dev. Secy.) See Thumb

Serial No.

The relevant facts, as set up in the Instrument, are subject to the

Bill – Amendment of Sec 60 (1) (h) & (i) C.P.C. relating to attachment of Wages & Salar

General and Revenue Secretariat

File No. of 193 [App. F. III—2

Serial No.

In the interpretation and working of clauses ~~(h)~~, (h) and (i) and (k) of subsection 1 of Sec. 60 of the Code of Civil Procedure in regard to exemption from attachment of wages and salaries, difficulties have arisen and the following points are for consideration:

(1) the scope of term 'labourers';

(2) whether wages and salary, if accumulated, could be attached as debt;

(3) whether Insurance premium, Provident Fund instalment, etc., could be deducted from the gross salary before determining the amount of salary available for attachment.

1. Scope of the term 'labourers'.

(i) Under Sec. 60 of the Code of Civil Procedure, prior to its amendment by Act XIII of 1938, the items that were exempt from attachment were:

(a) the wages of labourers and domestic servants to the full extent;

(b) the salary of any public officer or of any servant of a railway company or local authority to the extent of Rs.20/- if it is between Rs.20/- and Rs.40/- and half the salary if it exceeded Rs.40/-.

By Act XIII of 1938. the first item has been retained and the limit of exemption in respect of salary has been raised to the extent of first fifty rupees and one-half the remainder of such salary. A third item is added, namely, salary of all employees other than public officers, etc., and the limit for exemption is the same as in the case of public officers.

WD 0544—GPB—30,000—2-9-38

The scope of the term 'labourers' appears to have been somewhat limited by the decision of Courts. The wages of labourers and domestic servants were exempt from attachment under the old Code of Civil Procedure also. In 5 Bombay, 132, it has been held that labourers are persons who earn their daily bread by personal manual labour or in occupations which require little or no art, skill, or previous education. This decision has been followed in 27, Mysore High Court Reports, 193, and it was held therein that a person employed by a mining company in the K.G.F. as a watchman is a labourer though he was paid monthly wages. Thus it would seem that unskilled workmen would come under the term 'labourers' in this section and that skilled workmen would not be considered as labourers.

Such a distinction appears to prevail in practice in the K.G.F's Courts. There the wages of unskilled labourers are exempt from attachment while those of skilled labourers are made liable to attachment.

It is obvious that such a distinction will remove a large category of workmen of the K.G.F. from this exemption. Workmen like maistries, fitters, engine-drivers, machine workmen, blacksmiths, blasters, drillers and such others would have to be considered as skilled workmen. In fact, except the ordinary coolie who digs earth or carries stuff, all the other workmen in the K.G.F. will have had some previous training and some amount of skill and so they

Serial No.

they would be skilled workmen. Most of the so-called skilled workmen get wages of about a rupee a day or less and they are not far better than unskilled workmen in respect of wages. It is really hard that they should not get any exemption at all!

(As the section stands at present) the wages of unskilled labourers are fully exempt from attachment. Salaries of public officers and workmen are exempt from attachment to the extent of the first fifty rupees and one-half of the remainder. /The wages of skilled workmen get no sort of exemption. not even the fifty rupees limit, since what they get is not considered as salary

terms 'wages' and 'salary' have not been defined in the Code of Civil Procedure. There does not seem to be much difference between them

> Salary seems to denote a higher degree of employment and is suggestive of a larger compensation for more important services than wages, which indicates inconsiderable pay; where salary is regarded as per annum compensation, while wages are defined as compensation paid or to be paid by the day, week, etc. Wages and salary seem to be synonymous convertible terms, though use and general acceptation have given to the word 'salary' a significance somewhat different from the word 'wages' in this, that the former is understood to relate to position or office, to be the compensation given for official or other service as distinguished from 'wages' a compensation for labour". (Bouvier's Law Dictionary, page 2983)

Many of these skilled labourers have their remuneration fixed on the daily rate basis. Their remuneration would more likely come under the term 'wages' than under the term 'salary' According to the section as it stands now, the wages of skilled labourers would not come under the exemption. This is the only class of workmen that do not get any exemption.

The recommendations of the Royal Commission on Labour were that all workmen should get exemption up to Rs.300/- per mensem. Their observations (page 231 of the report) are as follows:

> " After weighing carefully the considerations on both sides, we are definitely of the opinion that it is in the worker's interest to reduce his attractiveness as a field for investment. ..... Our proposals, then, are mainly directed towards making it unprofitable for the money-lender to advance to workers amounts which are beyond their power to pay. Under the Civil Procedure Code, it is possible for a money-lender to secure the attachment of the wages of any one who is not a labourer or a domestic servant, and we understand that the majority of workers in organized industry would not be regarded as labourers within the meaning of the Act. But in respect of certain classes of employees, particularly railway servants and the servants of local authorities, the law allows the money-lender to use the employer as his debt-collector to a much greater extent. We recommend that the salary and wages of every workman receiving less than Rs.300/- per month be exempted entirely from the possibility of attachment."

Our Amending Act of 1938 follows the British Indi Amending Act. When the British Indian Amending Act was passed, the loophole in the section (or a possibility of a restriction) does not appe to have been noticed. According to the speech of Si

Serial No.

Sir Henry Craik who introduced the bill, the idea seems to have been to apply it to all classes of workers. He states as follows:

> " The Royal Commission on Labour dealt of course only with industrial workers but inquiries have satisfied us that there is just as much indebtedness among workers of any other type, for example clerical employees, as there is among industrial workers and also that there is very large amount of indebtedness among the poorer employees of Government. Therefore the bill which I am now commending to the attention of the House embraces all classes of workers and is not confined only to industrial workers."

Mr. Joshi in his speech adverted to this when he said:

> "moreover as the word 'labourer' is not defined, a large number of workers who work in the factories in various capacities may not be included by Courts of Law in the word 'labourer'"

But the argument was not pursued further.

It would be a real hardship that the wages of a machine workman or a maistry or a fitter or the driver of an engine, amounting to Rs.30/- a month, should be liable to attachment on the basis of a doubtful distinction that he is a skilled labourer. It is the policy of the law to destroy the credit of the workman, as stated by the Royal Commission on Labour, by making it more difficult to get his remuneration attached. It is necessary in the interests of organized industries that a skilled labourer also should be allowed some means of subsistence by giving him exemption from attachment.

To give effect to this, it is suggested that clause (h) of subsection 1 of section 60 be amended. The existing clause runs thus:

> " the wages of labourers and domestic servants, whether payable in money or in kind; and salary, to the extent of the first fifty rupees and one-half ~~of~~ the remainder of such salary;"

The amendment suggested is as follows: [The second portion is put in (a)]

> " the wages of labourers and domestic servants whether payable in money or in kind;(a) and wages and salary of all employees other than labourers and domestic servants, to the extent of the first fifty rupees and one-half the remainder of such salary;".

If the Courts hold that skilled labourers come within the term 'labourers', then their wages would be fully exempt. But if skilled labourers do not come under the term 'labourers', then they would get the benefit of the exemption limit of fifty rupees as in the case of other employees whose remuneration is termed as salary.

(2) In regard to the salary of a public officer, etc. there is a proviso to the effect that where a part of such salary has been under attachment for a period of twenty four months, it shall be exempt from attachment until the expiry of a further period of twelve months, etc. This is to give some sort of respite to the official. This proviso, as it stands, applies only in respect of the salary of officials, railway servants, etc. It seems to be reasonable to apply it in respect

Serial No.

respect of the wages and salaries of private employees also who come under clause (h).

I would suggest that for the words ' Provided that, where the whole or any part of the portion of such salary liable to attachment has been under attachment, " the words " Provided that, where the whole or any part of the portion of wages or salary liable to attachment under clauses (n) and (l) has been under attachment, " be substituted

2. Whether wages and salary, if accumulated, could be attached as debt.

Under Sec. 60 of the Code of Civil Procedure, debts are attachable. Though under the exemption clauses wages and salary are not attachable as wages and salary, it is possible to hold that they could be attached as debt if they get accumulated in the hands of the employer. To avoid any such attachment being effected on the basis of the remuneration being considered a debt, an explanation has been added to Sec. 60 as Explanation 1. which runs thus:

> " The particulars mentioned in clauses (g), (h), (i), (j), (k), (n) and (o) are exempt from attachment or sale whether before or after they are actually payable."

(This was in the c... section also.) According to thi wages and salary would be exempt from attachment even

NOTE—Contn. Sheet.

WD 0544—GPB—30,000—2-9-38

even after they have become actually payable. By Amending Act XIII of 1938. a clause was added to Explanation 1 as follows:

> " and in the case of salary other than salary of a public officer or a servant of a railway company or local authority the attachable portion thereof is exempt from attachment until it is actually payable "

The result of this is that wages of unskilled labourers and salary of officials. etc.. are exempt from attachment even though they have become actually payable. But the salary of private officials is not exempt from attachment if it has become actually payable It does not seem to be fair to grant exemption on the one hand and to take it away on the other by a different interpretation. This exemption from attachment after the salary has become actually payable should be allowed to private employees also. I would therefore suggest that the clause added to explanation 1 by the Amending Act XIII of 1938 be deleted. By doing so. the wages and salary of all employees whether private or official. skilled or unskilled labourers. would be placed on the same basis so far as non-liability for attachment, after they become payable, is concerned.

3. <u>Whether Insurance premium, Provident Fund instalme etc., could be deducted from the gross salary before determining the amount of salary available for attachment</u>.

Explanation 2 to Sec. 60 defines sa

Serial No.

It is as follows:

> " In clauses (h) and (i), 'salary' means the total monthly emoluments, excluding any allowance declared exempt from attachment under the provisions of clause (k), derived by a person from his employment whether on duty or on leave."

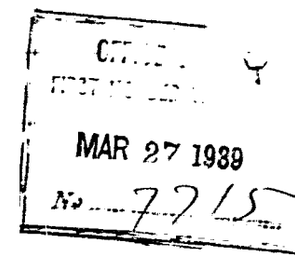
There is nothing to indicate whether compulsory deductions on account of insurance premium, Provident Fund, etc., have to be deducted from the total monthly emoluments for determining the salary liable to attachment. In 6 Madras 179 it has been held that the salary exempted from attachment is half the pay actually drawn by the judgment debtor at the time of attachment. This implies that the pay or salary to be taken into account for purposes of attachment is the pay or salary actually drawn after compulsory deductions are deducted. It is desirable that this point is made clear in the section itself as Courts do not seem to interpret consistently in regard to this.

To give effect to this, Explanation 2 may be amended as follows:

> ." In clauses (ha) and (i), 'wages and salary' mean the total emoluments calculated on a monthly basis, excluding (i) deductions declared by Government by notification in the official gazette to be exempt from attachment and (ii) any allowance declared exempt from attachment under the provisions of clause (k), derived by a person from his employment whether on duty or on leave."

Bill to amend the Workmen's Code Sec 60 relating to attachment of wages & Salary

File No. of 193 | General and Revenue Secretariat




A draft Bill has been put up
Sr Member) Cl
25/3/39

W
27/3/39

Finance action may be
U.S. (Pol.)

Cl
27/3/39
DKR
27
27
3

A draft statement of General Principles is put up
Bill
This may also be treated as a Statement of
Objects & Reasons. This is a Cabinet Memo
Labour
Finance
Genl Secy

Labour has put up a revised statement
& Agenda

Clause 1 of the draft of the Bill & Letter the term employer

the term is used in Sec 2 (30)
28 2 B of the Workmen's Compensation Act & the
Workmen's Compensation Act & the
Trade Unions Act the Terms used
are "Employer & Workmen" and the
terms "employ" employment are known

6530/838

Code of Civil Procedure (amendment) Bill

General and Revenue Secretariat | File No. | of 193 | [Ap

Serial No.

It follows from them that employee can be well understood to mean the person employed by an employer. It is more comprehensive than labourer, workman or artisan etc

GENERAL SECRETARY. 5-15 P.M. 24 APR. 1939

(Secy)

OFFICE OF THE FIRST MEMBER OF COUNCIL MAY 1 1939 8525

Legal Secy to discuss statement of financial position with Act. Sec.

(1st member)

This is a Council matter - may perhaps be disposed of by circulation

(Chief Secy)

DEWAN'S OFFICE 4 MAY 1939 No. 8084

C.S. circulation

1115

4-5-

NOTE—Contn. Sheet.

WD 0544—GPB—30,000—2-9-83

**For Disposal by Circulation.** **No. C. 468**

1938-39

**GENERAL AND REVENUE SECRETARIAT**

**Council Matter.**

*Subject*

Bill further amend the Code of Civil Procedure, 1911, for certain purposes.

*Circulated to the Members of Council.*

By Order,

*Chief Secretary to Governme*

th May 1939.

**t Member of Council.**

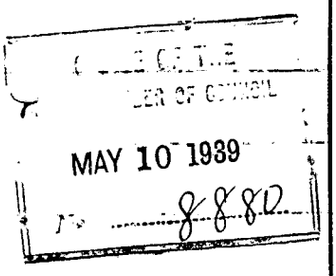
**Second Member of Council.** 10.5

9.5.39

Code of Civil Procedure

General and Revenue Secretariat | File No | of 193 | [App. F. III–2

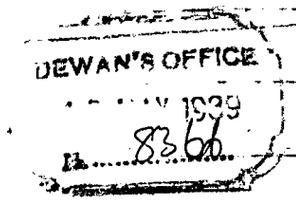
Serial No.




a D.F.R is put up

One 10-5-39 Dorn (Hon'ble Member) hg 10/5

Signed F.R. is kept below. Sd/-




11/5/39 11/5/39

Sd/- with a D.F.R

Dorn 12/5 (Dewan) hg

General and Revenue

Secretariat.

SUBJECT:—

Bill further to amend the Code of Civil Procedure, 1911, for certain purposes

(*)

31. All urgent or confidential files returned with His Highness' orders may in the absence of instructions or indications to the contrary, be ordinarily circulated to the Members of Council for perusal after the issue of orders.

33. The Secretaries concerned should see that orders in the cases referred to above are issued at once and that the files are returned immediately after to the Chief Secretary for circulation to the Members.

34. In all other cases, the files will first be circulated to the Members of Council at Headquarters and then sent to the Secretariat concerned for the issue of orders.

Circulated to Members of Council for perusal of His Highness' orders before/~~after~~ issue of orders. (*Vide* Rules 31, 33 and 34 of the Subsidiary Rules for the conduct of business of Council in the Manual of Council Rules and Procedure.)

*Government.*

Through the Secretary to Government,

.....Department.

9246
22.5.39

FIRST MEMBER OF COUNCIL.

22/5/39

A1299
23.5.39

SECOND MEMBER OF COUNCIL.

23-5

Under Secy. Pol

23.5.39

WD 01152—GPB—750—21-12-38

23.5

**Record of Cases submitted for the Orders of His Highness the Maharaja.**

## *Subject.*

Bill further to amend the Code of Civil Procedure, 1911, for certain purposes.

*Submitted to His Highness.*

*I submit herewith a Final Note by the* FIRST *Member of Council on the subject of* the Bill further to amend the Code of C: rocedure, 1911 for certain purposes,

.....

*for His Highness' gracious approval.*

Dewan.

Camp Fernhill,

13th May 1939.

**Final Note by the First Member of Council.**

***Subject.—***

Code of Civil Procedure (amendment)Bill, 1938.

The Code of Civil Procedure (amendment) Act, 1938, amending Section 60 of the Code of Civil Procedure was passed to give effect to the recommendations of the Royal Commission on Labour and of the Committee appointed to examine the question of indebtedness of officials in Mysore. Under this amendment

(a) the wages of labourers and domestic servants, and salary to the extent of the first fifty rupees and one-half of the remainder of such salary,

and

(b) the salary of any public officer or any servant of a Railway Company or local authority to the extent of the first fifty rupees and one-half of the remainder of such salary

are exempted from attachment.

It has since been found, however, that there are difficulties in the interpretation and working of section 60 of the Code, particularly in regard to the following matters:-

(1) the scope of the term "labourers", i.e., whether it applies only to unskilled workers or includes skilled workers also;

(2) whether wages and salary if accumulated could be attached as debt, and

(3) whether insurance premia, subscriptions to provident funds, etc. could be deducted from the gross salary before determining the amount of salary available for attachment.

It is therefore proposed to amend the Code of Civil Procedure with a view to a clearer elucidation of the points mentioned above.

The Dewan and the Second Member of Council have agreed to the proposal. I solicit the gracious sanction of His Highness to place the general principles of the Bill before the ensuing Session of the Representative Assembly and to introduce the Bill in the Legislative Council in due course.

M. N. Srinivasa Rao

MEMBER OF COUNCIL.

Bangalore,
11th May 1939.

D 1781/39

# Code of Civil Procedure (amendment) Bill

General and Revenue Secretariat | File No. | of 193 | [App. F. III–2

Serial No.

[illegible] OFFICE
[illegible] 1939
8726

OFFICE OF THE
[illegible] OF MEMBER IN CHARGE
MAY 24 1939
9329

The Statement of general principles here, if approved, be sent to the R.A. for further action.

Yes hy
19.5.39 19.5

To the L.C. Office.

with the Corrected Proof of the Statement of Gen. Principles for necessary action.

19.5.39 3 Copies taken & file returned.

BVN 10.5.39 Proof Gr

19.5

Submitted for orders if the Bill may be Published under rule 8 of the L.C. Rules. The Statement of general Principles bill, if approved, be adopted as the statement of objects and reasons

26.5.39 Hon Member & DeWaal

NLL 24/5/39

now DeWaal & above word Placing order for the Hon Member to Publication

25.5

To the L.C. Office with three Copies of the Bill and Statement of Objects and reasons.

25.5 3 copies taken & file returned.

25.5.39 25.5

Re submitted

25.5. DeWaal

NLL 1785 25.5

Code of Civil Procedure (amendment) Bill.

File No. of 193 .

General and Revenue Secretariat

Serial No.

T.C.
JUN 15 1939
No. 9819

The Bill was published under rule 8 of the Rules of Business, in a Gazette Extraordinary dated 25th May 1939.

The General Principles of the Bill were placed before the R.A. at its recent session and after some discussion accepted by that Hon'ble House.

The following Motions are put up for inclusion in the Agenda of the ensuing session of the Le

1. Motion that the Bill published under rule 8 of the Rules of Business be read in Council.

Mover – 1st Member

Seconder – Law Secretary

2. Motion that the Bill be referred to a Select Committee.

# Code of Civil Procedure (amendment) Bill.

General and Revenue Secretariat | File No. | of 193 | [App. F. III—2

Serial No.

This Bill was introduced in the Lc at the recent June Session and referred to a Select Committee consisting of the following members:—

(1) First Member Chairman. ✓
2. Mr. G. Benn White ✓
3. " G. Ramanuja Iyengar ✓
4. " Mahomed Abbas Khan ✓
5. " H. B. Gundappa ✓
6. " M. L. Nagappa Setty ✓
7. " Mirle N. Lakshminarayappa ✓
8. " M. S. Ramachandra Rao ✓
9. " C. Subrahmanya Iyer ✓

21.8.39

Issued p 1057 - 64 to the members for the meeting on the 2nd September 1939 at 2 p.m.

The R.A. and Lc Proceedings relating to the Bill are put up.
A Comparative table showing the changes proposed is also put up.
The file may perhaps be submitted to the First Member who is Chairman.

6820 P

The Code of Civil Procedure (amendment) Bill.

File No. of 193

General and Revenue Secretariat

The Select Committee met on 2.9.1939 at 2 P.M. All the members of the Committee were present.

The several clauses of the Bill were gone through and it was decided to omit Clause 3 altogether and allow the amendment to take effect in the normal course of things from the date of assent to the Bill.

A draft report is put up for approval of the Hon'ble Members.

8/9/39

(Law Secy)

Hon'ble Mr. Speaker & Members

OFFICE OF THE FIRST MEMBER OF COUNCIL
SEP 12 1939
No. 2457

SECY. LAW DEPT. 1684
9 SEP. 1939
GOVT OF MYSORE

Law Secy
11/9

Urgent
Typing
11/9

TYPING SECTION
11 SEP. 1939
GEN. & REV. SECTT.

The report is adopted as revised and

(Law Secy)

1st Member,

13/9/39

Secy

11

Secy
14

Issued P 1969-76 d 18.9.39 Sending Copies of report to Members for approval.

Report of the Select Committee has been received from all the members with their approval. Three copies will be sent to the L.C. Office for further action if approved.

18.9.39

4331/p839

Code of Civil Procedure (amendment) Bill.

General and Revenue Secretariat.

File No. D.844/39 of 19 [App. F. III-2

Serial No.

COUNCIL OF THE GOVERNOR IN COUNCIL
JAN 5 1940
6160

To the Leg Office with three copies of the report for publication.

Leg
8.11.39.

3 Copies taken & sent accordingly.

BVN.
8-11-39

Prot. Leg
8.11.39

The Report of the Select Committee has been published in the Gazette.

The following Motions are put up for inclusion in the Agenda of the ensuing Leg session

1. Motion that the report of the Select Committee and the Bill as amended by it be taken into Consideration

Mover 1st Member

Seconder Law Secretary.

2. Motion that the Bill as amended by the Select Committee be passed.

Mover 1st Member

Seconder Law Secretary.

Leg
4.1.40
BVN

Law Secretary 3/1

1st Member Leg 4/1

4331
P Code of Civil Procedure (amt) Bill

File No. D.1119/20 of 19

General and Revenue Secretariat.

Serial No. 5411

5

To be noted

for noting the motions for inclusion in the Agenda and

for returning the file.

Noted & returned.

BUN. 9-2-20 (Protection Branch)

At the sitting of the L.C on 22nd inst the motions regd to above were passed and the Bill was finally adopted

Dated with a D.E.N.

Bom 23/1

**Final Note by the First Member of Coun**

**Subj...**

Code of Civil Procedure (amendment) Bill.

Gracious approval of His Highness was accorded in May 193[illegible] to place before the Representative Assembly the statement of general principles of a Bill to amend the Code of Civil Procedure, 1911.

The general principles were accordingly considered by the Representative Assembly during the Birthday session and were accepted by them. The Bill itself was thereafter published and introduced into the Legislative Council in the Budget session of 1939 and was referred to a Select Committee.

The report of the Select Committee thereon was considered by the Legislative Council at the meeting held on 22nd January 1940 and was passed by that Body.

I now solicit gracious sanction of His Highness to promulgate the Bill into law.

M. Rama Rao

MEMBER OF COUNCIL.

Bangalore,
25th January 1940.

*Submitted to His Highness.*

*I submit herewith a Final Note by the* FIRST *Member of Council on the subject of* the Code of Civil Procedure (amendment) Bill, *for His Highness' gracious approval.*

Mirza M. I.
*Dewan.*

Bangalore,
29th January 1940.

Record of Cases submitted for the Orders of His Highness the Maharaja.

*Subject.*.

Promulgation into law of the Bill to amend the Code of Civil Procedure.

*Order.*

~~KRH~~
30/1/40

Secretariat.

SUBJECT:—

promulgation into Law of the Bill to amend the ... of C Procedure

(*)

31. All urgent or confidential files returned with His Highness' orders may, in the absence of instructions or indications to the contrary, be ordinarily circulated to the Members of Council for perusal after the issue of orders.

33. The Secretaries concerned should see that orders in the cases referred to above are issued at once and that the files are returned immediately after to the Chief Secretary for circulation to the Members.

34. In all other cases, the files will first be circulated to the Members of Council at Headquarters and then sent to the Secretariat concerned for the issue of orders.

Circulated to Members of Council for perusal of His Highness' orders before/after issue of orders. (*Vide* *Rules 31, 33 and 34 of the Subsidiary Rules for the conduct of business of Council in the Manual of Council Rules and Procedure.)

*Chief Secretary to Government.*

Through the Secretary to Government,

.....Law.....Department.

6

3370
1.2.40

FIRST MEMBER OF COUNCIL.

1/2/40

6273
2.2.40

SECOND MEMBER OF COUNCIL.

2.2.40

4321

Code of Civil Procedure (Amendment) Act

General and Revenue Secretariat | Legs File No. 41 | of 193 | [App. F. III—2

Serial No.

The ruling of His Highness was received on the 30th January 1940 to promulgate the Bill into law

A draft G.O. publishing the Act - Act no IV of 1940

put up
5.2.40

Advocate General begs to
Law Secretary).
3/5/40

TAW DEPT. SJ 05 5 FEB. 1940 DIR O- MYSORE

Issued for P 5333 - Legs 41 - 39-1 dt 6.2.40

Publishing the Act as Act IV of 1940

The Act has been Published in the Gazette of the 8th instant

(Pt IV)

A Rec

## NOTIFICATION.

*No. L. C.* 2811, *Bangalore, dated* 11*th November* 1939.

Under Standing Order No. 49 of the standing orders for the conduct of business of the Mysore Legislative Council, the following Report of the Select Committee on the Code of Civil Procedure (Amendment) Bill is published for general information.

By Order,

C. SUBRAHMANYA AIYAR,

*Secretary,*

*Mysore Legislative Council.*

## The Code of Civil Procedure (Amendment) Bill. Select Committee Report.

We, the members of the Select Committee to which the Code of Civil Procedure (Amendment) Bill was referred, have carefully considered the several clauses of the Bill and have only one suggestion to make.

We recommend that clause 3 of the Bill which restricts the application of this amending Act to proceedings arising out of suits instituted after 1st day of July 1939 may be omitted so that the Act when it comes into force may apply to all proceedings irrespective of the date of the filing of the suit.

As we have not materially altered the Bill, we consider that it need not be republished.

(Sd.) N. Madhava Rau (*Chairman*
,, G. Benn White.
,, G. Ramanuja Iyengar.
,, Mahomed Abbas Khan.
,, H. B. Gundappa.
,, M. L. Nagappa Setty.
,, Mirle N. Lakshminarana
,, M. S. Ramchendra Rao.
,, C. Subrahmanya Aiyar.

Printed by the Superintendent at the Government Press, Bangalore.

## NOTIFICATION.

*No. 3326—L. C., Bangalore, dated 25th May 1939.*

Under Rule 8 of the rules for the conduct of business of the Mysore Legislative Council, the accompanying Bill further to amend the Code of Civil Procedure, 1911, for certain purposes is published for general information with the statement of objects and reasons.

By Order,

A. SUNDARARAJA RAO,
*Secretary,*
*Mysore Legislative Council.*

## Bill further to amend the Code of Civil Procedure, 1911, for certain purposes.

Whereas it is expedient further to amend the Code of Civil Procedure, 1911, for the purposes hereinafter appearing; it is hereby enacted as follows:—

(1) This Act may be called the Code of Civil Procedure Amendment Act, 1939. Short title.

(2) In the proviso to sub-section (1) of Section 60 of the Code of Civil Procedure, 1911—

(*a*) in clause (*h*) delete the words 'and salary, to the extent..... of such salary' and insert the following as clause (*ha*):—

> "wages and salary of all employees other than labourers and domestic servants, to the extent of the first fifty rupees and one-half the remainder of such salary;"

(*b*) in the proviso under clause (i), for the words such salary liable to attachment' substitute the words wages and salary liable to attachment under clauses (*ha*) and (i);

(*c*) in Explanation 1, add item (*ha*) after item (*h*) and omit the words 'and in the case of salary other than..... .....it is actually payable

(*d*) for Explanation (2) substitute the following :—

"in clauses (*ha*) and (i) 'wages and salary' mean the total emoluments calculated on a monthly basis, excluding (i) deductions declared by Government by notification in the official Gazette to be exempt from attachment and (ii) any allowance declared exempt from attachment under the provisions of clause (*k*), derived by a person from his employment whether on duty or on leave."

Retrospective effect.

(3) The amendments made by Section 2 shall not have effect in respect of any proceedings arising out of any suit instituted before the first day of July, nineteen hundred and thirty nine.

## CODE OF CIVIL PROCEDURE (AMENDMENT) BILL.

### Statement of Objects and Reasons.

The Code of Civil Procedure (Amendment) Act, 1938 amending Section 60 of the Code of Civil Procedure was passed to give effect to the recommendations of the Royal Commission on labour and of the Committee appointed to examine the question of indebtedness in Mysore.

Under this amendment,

(1) wages of labourers and domestic servants and salary to the extent of the first fifty rupees and one-half of remainder of such salary, and

(2) salary of any public officer or any servant of the Railway Company or local authority to the extent of the first fifty rupees and one-half of the remainder of such salary,

are exempt from attachment.

It has since been found, however, that there are difficulties in the interpretation and working of Section 60 of the Code, particularly in regard to the following matters :—

(1) The scope of the term 'Labourer', *i.e.*, whether it applies only to unskilled workers and whether it includes skilled workers also ;

(2) Whether wages and salary if accumulated could be attached as debt ; and

(3) Whether insurance premia, subscription to provident funds, etc., could be deducted from the gross salary before determining the amount of salary available for attachment.

The scope of the term 'labourers' appears to have been somewhat limited by the decision of the Courts. The wages of labourers and domestic servants were exempt from attachment under the old Code of Civil Procedure also. It has been held by Courts in some cases that 'labourers' are persons who earn their living by personal manual labour or in occupations which require little or no art, skill or previous education. It would thus appear that only unskilled workers would get the benefit of the exemption in this section while skilled workers would not get the benefit.

It is obvious that such a distinction will remove from the scope of the exemption a large category of workmen like maistries, fitters, engine drivers, machine workmen, black-smiths, blasters, drillers and such others who would have to be considered as skilled workmen. Most of the so called skilled workmen do not get high wages and they are not far better than unskilled workmen in respect of their earnings. It would be a hardship if they should get no exemption at all.

As the section stands at present, the wages of most skilled workmen do not appear to come under any sort of exemption, not even the fifty rupees limit, since their remuneration which is fixed on the daily rate basis is not considered as being salary. This is the only class of workmen that do not get any exemption.

It is necessary in the interests of organised industries that even a skilled labourer in debt should be allowed some means of subsistence by giving him the benefit of exemption from attachment of wages or salary up to the fifty rupees limit at least.

Under Section 60, explanation I, as amended by Act XIII of 1938, wages of labourers and domestic servants, and salary of officials, etc., are exempt from attachment whether before or after they are actually payable. But the salary of private officials and workmen is not exempt from attachment if it has become actually payable. There is no necessity for the distinction and this exemption from attachment after the salary has become actually payable should be allowed to private employees also.

There is no definite indication in Section 60, whether compulsory deductions on account of insurance premia, subscriptions to provident funds, etc., have to be deducted from the total monthly emoluments for determining the salary liable to attachment. It is possible to interpret that salary means the salary actually drawn, *i.e.*, the net salary after deducting deductions at source. It is desirable to make this point clear.

It is therefore proposed to amend the Code of Civil Procedure with a view to a clearer elucidation of the points mentioned above.

| Present Section. | Proposed amendment. |
|---|---|
| 60. (1) The following property is liable to attachment and sale in execution of a decree, namely - | 60.(1) The following property is liable to attachment and sale in execution of a decree, namely - |
| x x | x x |
| Provided that the following particulars shall not be liable to attachment or sale, namely - | Provided that the following particulars shall not be liable to attachment or sale, namely - |
| x x | x x |
| (h) The wages of labourers and domestic servants whether payable in money or in kind; and salary, to the extent of the first fifty rupees and one half the remainder of such salary; | (h) The wages of labourers and domestic servants whether payable in money or in kind; |
| | (ha) Wages and salary of all employees other than labourers and domestic servants, to the extent of the first fifty and one half the remainder of such salary; |

(i) The salary of any public officer or of any servant of a Railway Company or local authority to the extent of the first fifty rupees and one half the remainder of such salary;

Provided that, where the whole or any part of the portion of such salary liable to attachment, has been under attachment, whether continuously or intermitently for a total period of twenty four months, such portions shall be exempt from attachment until the expiry of a further period of twelve months and where such attachment has been made in execution of one and the same decree, shall be finally exempt from attachment in execution of that decree;

x x

Explanation. 1. The particulars mentioned in clauses (g), (h), (i), (j), (k), n), and (q) are exempt from attachment or sale whether before or after they are actually payable and in the case of salary other than salary of a public officer or a servant of a railway company or local authority the attachable portion thereof is exempt from attachment until it is actually payable:

(1) The salary of any public officer or of any servant of a Railway Company or local authority to the extent of the first fifty rupees and one half the remainder of such salary;

Provided that, where the whole or any part of the portion of wages and salary liable to attachment under clauses (ha) and (i), whether continuously or intermittently for a total period of twenty four months, such portion shall be exempt from attachment until the expiry of a further period of twelve months and where such attachment has been made in execution of one and the same decree, shall be finally exempt from attachment in execution of that decree;

x x

Explanation.1. The particulars mentioned in clauses (g), (h), (ha), (i), j), (k), (n), and (q) are exempt from attachment ~~or sale~~ whether before or after they are actually payable;

Explanation. 2. In clause (h) and (i), "salary" means the total monthly emoluments, excluding any allowance declared exempt from attachment under the provisions of clause (k) derived by a person from his employment whether on duty or on leave.

Explanation.2. In clauses (ha) and (i) "wages and salary" mean the total emoluments calculated on a monthly basis excluding (i) deductions declared by Government by notification in the official Gazette to be exempt from attachment and (ii) any allowance declared exempt from attachment under the provisions of clause (k), derived by a person from his employment whether on duty or on leave.

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It has since been found, however, that there are difficulties in the interpretation and working of Section 60 of the Code, particularly in regard to the following matters :—

(1) The scope of the term 'Labourer', *i.e.*, whether it applies only to unskilled workers and whether it includes skilled workers also ;

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Syed 31-38

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wages [illegible] employees

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20-9

Dr Rees

1382/209

GEN. & REVENUE SECRETARIAT.
23 OCT 1975
DEVELOPMENT BRANCH.

2

21-9

11.44 P 938

Telegraphic Address :—
"MINESPECTOR"

GOVERNMENT OF MYSORE.

1322
REVENUE SECRETARIAT
SEP 1938
DEVELOPMENT BRANCH.

## DEPARTMENT OF MINES AND EXPLOSIVES.

No. 446
Encl. 2

SECOND MINISTER OF GOVT.
16 SEPT. 1938
No. 2025

*Dated Oorgaum,* 5th September 1938
(S. India)

Geol Dept no 72-38

CONFIDENTIAL

Geol 31-38-1

FROM

K. Duraiswamier, Esq., B.A., A.I.M.M.,
*Chief Inspector of Mines and Explosives in Mysore.*

To

M. Venkatanaranappa, Esq., B.A.,
Secretary to the Government of
His Highness the Maharaja of My[illegible]e
Development Department,
[illegible]angalore.

Sir,

I have the honour to forward herewith, for the information of Government, copy of an ananymous petition received by the Ag. Superintendent, Ooregum Gold Mining Co: of India, Ld. on the 3rd inst. re: the attachment of pay or wages of the employees The Munsiff, Kolar Gold Field, who was consulted in the matter has replied to the Secretary, Messrs. John Taylor & Sons' Committee that the amendment to the Civil Procedure Code (Act No. XIV of 1938) comes into force only with effect from 1st July 1938 and copy of his letter is also enclosed herewith. The Munsiff's reply is being translated into Tamil and distributed to the mining labour.

Further developments, if any, will be reported to Government in due course.

I have the honour to be

Sir,

Your most obedient servant

K. Duraiswamier
Chief Inspector of Mines &
Explosives in Mysore.

Protect Dr regarding the
correction yet Munsiff's Verdict

R.S.
Secretariat papers

15-9-38 166/15.9 In view of Section 3 of Act XIII of 1938 (Hag
the opinion of Munsiff seems correct
166/19/9/166 Asst Secy
166/7.9.
1.2.9

THE OOREGUM GOLD MINING COMPANY OF INDIA, LIMITED.

From

The Coolies of the Ooregum Mine

To

The Superintendent,
Ooregum Mine.

Most Respected Sir,

We, the most obedient cooly population of the Mine respectfully beg to place the following facts for favour of your kind consideration.

You are well aware of the fact that we have been serving the Company for a number of years on low wages, and yet if by circumstances we fail to attend work on any particular day, you are authorised to either fine or dismiss us even without investigation. In spite of all these hardships we have been serving the Company wholeheartedly as such you know very well how we are to be treated.

Further, we cannot expect to get any loan from the Company with the exception of Firewood chits. Since no loan is given to us from the Company, the Company has no authority to deduct from our salaries, amounts other than the value of firewood chits. Therefore commencing from August pay our salaries must be paid to us without any attachment. The Mining Comapnies have nothing to do with our debts to Marwadis. Such debts will be dealt with by us personally with the Sowcars concerned.

In case our salaries are attached this month, all our demands must be met, and in case we meet with your refusal, we shall call for a general meeting of all employees and decide our course of action. Then, you should not give us any trouble. We are informing you of this eight days in advance which kindly note.

If there are no attachments this month we will continue to do our work as usual, otherwise there is going to be trouble for us.

We humbly pray therefore that a favourable reply be given to us at an early date.

Kindly do not ignore our appeal.

We beg to remain,
Most Respected Sir,
Your most obedient servants.

"Copy"

CHIEF INSPECTOR OF MINES &
EXPLOSIVES IN MYSORE.
5.9.38

This may be sent to
the Rao Bd, Land Dept

Done
2/9

This may perhaps
only go to the Secretary
for perusal

11/9
6

Dear Secy)

11/9/39 (Vide orders going on p.c.d.)

Law - please pursue a copy
of Act XIII of 1938
NKR
7.9

A copy of Act XIII of
1938 is sent us
15/9/39

25th January 1937

2390/CB

Immediate & Confidential.

Dear Mr. Sundara Rao

Government understand that there is some unrest brewing among the labourers in the Kolar Gold Field Mines in connection with the attachment of their wages by the Courts on account of debts due from them to money-lenders. Messrs. R.G.K. Morrison, H.M.White and W. R. Crocker of the Mines interviewed the First Member on the 23rd instant on this matter but they were not able to furnish full and clear details.

I am desired to request you to collect detailed information as to the nature and causes of the alleged unrest, if any, and come here to-morrow for a discussion with Government.

G. Sundara Rao, Esqr., B.A.,
Deputy Commissioner, Kolar District.

Immediate & Confidential.

L.../CB 5725/1/39

Dear Mr. Sund

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I am desired to request you to collect detailed information as to the nature and causes of the alleged unrest, if any and come here tomorrow for a discussion with Government

Yours sincerely,

MK
25/1

G. Sundar Rao, Esq., B.A.,
Deputy Commissioner, Kolar District.

THE CHAMPION REEF GOLD MINES OF INDIA LTD.
CHAMPION REEF
9 JAN 1939

The Superintendent

Kolar Gold Fields.

Most Respected Sir

We the undersigned employees of the Mines most respectfully and humbly beg to submit the following for favourable and sympathetic consideration:-

We are depending upon your kindness and generosity for helping us out of our difficulties and we are always grateful for your never failing help.

Recently the Munsiff of the Robertsonpet Munsiff's court held that our poor earnings amounting to less than Rs 50/- a month might be attached towards dues payable in old Insolvency cases filed long before.

Some of us are suffering for years out of our ignorance and illiteracy and we sincerely thought that after all we got some relief by the passing of a New Act in July 1938 by our beneign and sympathetic Government. To our misfortune the local Judge has given an interpretation to it against our interest. Hence we have to take the matter in appeal and we understand further ruling is given by the High Court there will no fina[illegible] in the matter.

Most o[illegible]s who might have filed discharge applications did not [illegible] ll now, on account of ignorance of Law and we mean doing so now. It is only in the cases of those who may not yet be entitled to submit discharge applications in law that the application of New Amended Civil Proceedure Code to old Insolvency Cases pending will become important.

Hence we earnestly and humbly beg your most respected and noble self to help us by not withholding any amounts out of our poor earnings in a month (which we do earn incurring a very great risk to life and limbs and after very great physical strain and labour) pending the final disposal which we mean taking up

with your generous help and support in appeal and with your kind permission and also till orders are passed on various discharge applications for which also we are making arrangements. We, as your loyal and devoted and humble petitioners and employees will ever be grateful for this act of charity and kindness towards innocent and ignorant workmen

Robertsonpet,

Dated 9-1-38.

We beg to remain,

Respected Sir.

our most humble and devoted servants

| | |
|---|---|
| 700 | [illegible] |
| 3528 | [illegible] |
| 3205 | [illegible] X |
| 5013 | [illegible] X |
| 3970 | [illegible] |
| 12783 | [illegible] |
| 6868 | [illegible] |
| 787 | [illegible] |
| 214 | [illegible] |
| 5982 | [illegible] |
| 7307 | [illegible] |
| 5854 | [illegible] |
| 411 | [illegible] |
| 7014 | [illegible] |
| 3712 | [illegible] |
| 3206 | [illegible] |
| 794 | [illegible] |
| 3359 | [illegible] X |

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|---|---|---|---|---|---|---|
| 6 | 74 | C. Frances | 8-0-0 | | 8 | - |
| 7 | 11/33-34 | Thulakanam, Sink Khd Laiseby Tho 12783 | 7-0-0 | | 7 | - |
| 8 | 98 | Kuppusamiaasaas, Jemper laiseby | 6-0-0 | | 6 | |
| 9 | 105/3536 | Cheri Veerasami, Driller, Tho 6920. Ayyavoo laiseby Thanjavur | 4-0-0 | | 4 | - |
| 10 | 17/36-37 | Rapiah, Timberlaiseby Tho 3924 under foreman David perumal | 5-0-0 | | 5 | - |
| 11 | 105/— | Chinniah, Tea Boy, Tho 3359 of Captain A Edwards | 1/3 | | 12 | 9 |
| 12 | 53 | Thulakanam a Rangasami, underground pipe fitter Tho 7307 under narasimalu | 1/3 | | 1 | 4 Sick |
| 13 | 19/33-34 | Kandaperi Arumudanadan, masoner Tho 14952 under gill | 6-0-0 | | 6 | - |
| 14 | 40/37-8 | C. Shrichel, Gang Road laiseby Tho 3528 | 1/3 | | 8 | 1 |
| 15 | 49/37-8 | C. Chinniah, Forest laiseby Tho 4700 | 1/3 | | 9 | 1 |
| 16 | 101 | Appadorai, Gang Road work Tho 3712 | 1/3 | | 9 | 8 |

Abstract of Receipts made at the various offices of the Superintendent, Champion Gold Mining Company Ltd. Champion Reefs K.G.F. for the month of September 1938

| No | Insolvency No | Name and address of the insolvent | Amount attached | Remarks |
|---|---|---|---|---|
| 1 | 43/2526 | Jayamma w/o Narasappa | 5 0 0 | 5 |
| 2 | 85 | Madhavan s/o Kaja Gokal Letty, Carpenter 957 | 10 0 0 | 10 |
| 3 | 69/2529 | P. Ponnusami, Welder, Welder Shop No. 820 | 7 0 0 | 7 |
| 4 | 86/30-31 | Kangayar Kandasamy s/o Kandasami, Incoline Mazdoor No. 3205. Gifford Shaft | 5 0 0 | 5 |
| 5 | 12/32-33 | Punganoor Munisami, Gang Road Mazdoor, Health Coal Shaft. | 6 0 0 | 6 |

forwarded with compliments to the Superintendent

Champion Gold Mining Company Ltd Champion Bay

for necessary action and early return

Mysore Government Seal

Recd 3/10/38

3/10/3

| | | | |
|---|---|---|---|
| 17 | 52/3586 | Mannar Ward No. 21 77. G. K. Machine Waisbry | 1/3 |
| | | C/o. O. V. Rajagopal | |
| 18 | 135/86/37 | Krishnasamy, Turner | 1/3 |
| 19 | 457 — | Doraisamia Chockanayam Ward No 21 4. Tinker | 1/3 |
| 20 | 129 | G. Doraisamy Machine Waisbry Ward No 9231 | 1/4 |
| 21 | 151/3586 | Theriperiyasamy Gang Roadwaisbry Ward No 2 | 6-0 |

IN THE COURT OF THE MUNSIFF AT KOLAR GOLD FIELDS.

***

Dated the 23rd day of December 1938

Present - D. Sreenivasachar, Esq., B.A.,B.L.,Munsiff.

Insolvency Case No.20/1920-21

Petitioner - Gopal @ B. Dorasamy.

Apponent - 1. Kundanmull Ponnalal.
2. M. Pokaraj.
3. Himmathmull.
4. Multanmull Gulabchand
5. Chaganmull Jesraj.

O r d e r.

1. The point for consideration in the above cases is a common point and that is, whether the earnings of the petitioners insolvent subsequent to 1-7-38 after the passing of the amending act of Civil Procedure Code, is to be deemed as after acquired property as defined in Section 28 Clause 4 of the Insolvency Act and as such whether the same vests in the receiver or the Court for the benefit of the creditors. The next question closed connected with this point and which has to be considered is whether the amending act of Civil Procedure Code Act XIII of 1938 has a retrospective effect on this question.

2. In the above mentioned cases the petitioners have filed applications for stay of attachment in respect of their earnings subsequent to 1-7-1938 on the ground that such earnings since they do not exceed Rs.50-0-0 are non-attachable under the next act Act XIII of 1938. My learned predecessor has passed orders in some of the cases holding that Act XIII of 1938 has a retrospective effect in respect of insolvency proceedings and as such the earning of the insolvents if not in excess of Rs.50/- subsequent to 1-7-38 are not attachable. And he has accordingly passed an order of stay of attachment in some of the cases. This was no doubt an ex-parte order as the

the creditors opponents were not notified and heard before the above said order was made. Subsequently some of the opponent creditors filed applications praying that they may be heard on the point and final orders passed. My learned predecessor thereupon re-opened the question and has posted all the cases for being re-heard. In insolvency case number 56/35-36 he has specifically stated that it would be better to come to a final conclusion after hearing the creditors as well and posted the case for re-hearing.

3. Mr. Rajagopal Rao who appears for the petitioners in some of these cases raised a preliminary contention that since my learned precedecessor had passed a final order the matter cannot be reconsidered by this Court. The order being an exparte order, I think that my learned predecessor was quite competent to reopen the matter for a hearing of both sides. After all the prayers of the petitioners is for a stay of attachment and not a cancellation for ever. Any how in view of the order passed by my learned predecessor in insolvency case number 56/1935-36 and the order passed in all other cases that they should be reheard, I need not go behind those orders.

4. The first point for consideration is whether wages and other moneys earned by an Insolvent by his personal labour and exertions constitute his personal earnings. According to decided cases including 19 Bombay 232 (I.L.R.) such earnings after the order of adjudication and before discharge do constitute the property of the Insolvents

5. According to Section 28 Clause (4) of the Insolvency Act such property though after acquired small forthwith best in the Court or [illegible]ver. As regards personal earnings by personal labour, accordin

to Section 66 of the Insolvency Act, provision has got to be made for the maintenance of the Insolvent and his family. Hence the after acquired earnings of an Insolvent subject to this extent, Viz., provision being made for maintenance vest forthwith in the Court or receiver. The vesting takes place as soon as the adjudication order is passed irrespective of the fact that the Court or the receiver cannot lay hands on such property until it is actually earned unlike in a degree of a Civil suit in the case of an adjudication order nothing remains to be done except to claim the amounts as it is already vested at the time of the adjudication itself.

6. According to Section 28 Clause 5 of the Insolvency Act it is no doubt true that property of an Insolvent does not include any personal earnings which are exempted under Section 60 of the Civil Procedure Code for the time being in force, i.e., at the time of vesting. Oncea property has vested in the Court or receiver, any subsequent change in the provisions of the Civil Procedure Code at the time of the actual getting at that property by the Court or receiver does not effect in the liability of such property being taken possession by the Court or receiver. For, once a property vested it cannot be divested. I have already hold that wages and other moneys earned by the Insolvent constitute his personal earnings [illegible] and property under Section 28 Clause 4 of the Insolvency Act. In these cases now under consideration such personal earnings have vested in the Court and the Court has from time to time get at it and distribute among the creditors. They dould have been proceeded against on the date of the adjudi-

adjudication and actually vested in the Court. So my view is that any subsequent change in the provisions of the Civil Procedure Code cannot have the effect of divesting such property which vested before the enactment came into force. The order of the Adjudication having the force of a decree, being passed before the new Act came into existence that could be legally enforced not with standing the amending Act. I am supported in this view by the decision in 1938. All India Reporter Calcutta 325, which is quite an analogous with the present case.

7. There is no necessity for an attachment under the Insolvency Act. Once a property has vested in the Court or receiver is entitled to it without doing anything further the Court or receiver has only to get at the property. It is not the attachment which may be made adopted to actually get at the property that gives a right to the Court or receiver but it is the order of vesting. Once a property has vested it cannot be divested.

8. There is no doubt at all regarding the proposition that the proceedings under the Insolvency Act cannot be called as suits or proceedings arising out of suits as defined in the Civil Procedure Code. If so, since Section 3 of the new Act, Act XIII of 1938 having definitely provided that the operation of the amending Act will not have retrospective effect in respect of proceedings arising out of the suits instituted prior to 1-7-38, will not Amending Act have retrospective effect regarding proceedings other than th arising out of suits? In order to answer to thi uestion it must be borene in mind that the Civil procedure code is enacted to provide the pro-

procedure for civil suits and proceedings arising therefrom and not for other proceedings. If other enactments like the Insolvency Act have instead of prescribing their own procedure itself, it is not for the Civil Procedure to make provision for such proceedings under other enactments. The marginal word "Retrospective" was much made off and it was much contended that the effect of that word was to make the provision of Act XIII of 1938 retrospective in respect of proceedings other than those arising out of suits. When the Legislature thought fit that the provisions of Act XIII of 1938 should not be retrospective in respect of proceedings in Suits instituted prior to 1-7-38, I think the spirit of the Legislature and its object was that it should not be retrospective in respect of other proceedings also. But the Civil Procedure Code being confined to Civil suits and proceedings arising therefrom.would have gone out of the way if Section 3 of the Act XIII of 1938 made mention of other proceedings also. That is not at all the schsme of the Civil Procedure Code. When another enactment like the Insolvency Act has thought fit to follow the Civil Procedure Code also, it follows that when Act XIII of 1938 is not retrospective in respect of Civil Suits and proceedings arising therefrom, the Act is not retrospective in respect of other proceedings under other enactments like the Insolvency Act.

9. Property attachable at the time of adjudication vests in the Court of the receiver. Explanation C in Act XIII of 1938 cannot therefore have anv reference to after acquired property of an insolvent as it vests forthwith without any further on the part of the receiver or the Court.

Once a property has vested the mode of actually getting at it is purely a matter left to the descrition of the Court. There is no necessity for an attachment at all. Even if attachment is resorted to, as the property has vested already, the question is whether it was attachable at the time of vesting. The same decision, viz., 1938 All India Reporter Calcutta 325 which I have already relied upon supports the view that the new Act, Act XIII of 1938 cannot be retrospective in effect even for Insolvency proceedings

10. In view of all these facts and circumstances, I hold that the provisions of Act XIII of 1938 have no retrospective effect on Insolvency proceedings and as such in cases where adjudications have been made prior to 1-7-38, the Insolvents cannot seek any benefit under the provisions of Act XIII of 1938. I pass no orders as to costs since the petitioners are all adjudged insolvents and the point decided is purely a point of law. A copy of this order will be placed in all the connected cases. Pronounced in open Court.

Sd/- D. Sreenivasachar

23-11-38 MUNSIFF.

"Copy

IN THE COURT OF THE MUNSIFF AT KOLAR GOLD FIELDS.

***

Dated the 30th day of November 1938.

Present - M.K. Srivasankar Rao, Esq., B.A.,B.L.,
Munsiff, K.G.F.

Insolvency case No.20 of 1920-21.

Petitioner - Gopal @ B. Doraiswamy.

Opponents - 1. Kundanmall Ponnalal
2. M. Pookraj
3. Himmathmull.
4. Multanmull Gulabchand
5. Cheganmull Jevraj

Interlocutory application No.34 dated 23-11-38. Insolvent files, an application on 21-11-38 praying for the stay of attachment as his pay is not attachable as per new rules etc., - I.C.20/20/21 (I.A. No.34) I.C.66/29/30 (I.A.No.11) I.C.35/31/32 (I.A. No.6) I.C.85/27/28 (I.A. No.10)

O r d e r.

These are applications for stay of attachment in the respective cases by the Insolvent petitioners that their comings do not vest in the Court and that the earnings are exempt from attachment under the recent amendment to the Civil Procedure Code (Act 13 of 1939). Each of them has filed a certificate from the Mines authorities that he is a labourer getting less than Rs.50/- per month. B. Doraiswamy petitioner in Insolvency case No.20 of 1920-1921 is a pump driver getting Rs.0-14-0 anna per day in the Mysore Gold Mining Company Limited. Rajagopala Chetty (Petitioner in insolvency case No.85 of 1927-28) is a band saw Mestri getting Rs.1-5-0 per day in the Champion Reef Gold Mining Company. A.Rajee (Petitioner in Insolvency case No.35/1931-32) is a Plateman getting Rs.1-4-0 in the Nandidroog Mining Company Limited. Iyakanno (petitioner in Insolvency case No.66 of 1929-30) is a Timber Mestri getting Rs.1-5-0 per day in Nandidroog Gold Mining Company.

2. The point for consideration is whether the earnings of the respective petitioner is exempt from attachment and so cannot be attached.

There is no doubt that their earnings do not exceed Rs.50/- per month, even if they work all the days in a month. From the class of work on which they are employed they are labourers. The term labourer has nowhere been defined. It may be said that a labourer is one who earns his bread by the sweat of his brow or phsical manual labour. If this definition is accepted, I think the petitioners come under that definition. Their earnings also come under the term wages because they are daily paid workmen in the Mines.

The distinction once made by the Mining Companies here between a skilled and an unskilled labourer for purposes of attachment is not of practical importance now in Insolvency cases after the new amendment to the Civil Procedure Code (Act 13 of 1938 The distinction which was being made varied from time to time whenever the lists of the employees were revised by the Companies. a bellman who was once classed as an unskilled labourer was classed at another time as a skilled labourer. Similarly a Tea-boy who was classed at once time as a skilled labourer was classed at another time as unskilled labourer.

There is no change in the use of the words "The wages of labourers and domestic servants whether payable in money or kind", used in Section 60 of the Old Procedure Code and the new Act (Act 13 of 1938). The words wages and labourers have therefore the same meaning under the old Act as well as the new Act.

The old Act was more liberal in a way because the wages of labourers and domestic servants were wholly exempt. Now by the new Act the wages of labourers getting less than Rs.50/- only are exempt.

3. The wages of labourers amounting to less than Rs.50/- can no longer be attached in insolvency cases as they have been exempted from attachment under the Civil Procedure Code of 1911 or any other enactment, does not vest in the Insolvency Court (Vide Section 28 clauses 5 of the Insolvency Act). The wages of the petitioners which have been so exempted from attachment under the new Act do not therefore vest in the insolvency Court. When they cannot vest they cannot be recovered.

4. It is on the principle of veting under Section 28 clause 4 of the Insolvency Act that recovery is made from out of the future earnings of an insolvent. I am not able to see my way for recovering the debts from out of the earnings of the men when they do not vest n court.

5 It may be said that the new Act does not apply to insolvency cases instituted prior to 1-7-38, but I do not think so for the following reasons:

The new Act (Act 13 of 1938) is an Act of procedure. It is of general applications. It is a rule of interpretation that rules of procedure are retrospective. The vital test which is appliedto see whether an Act is retrospective or not is whether any vested rights are disturbed. I do not think any person had or has a vested right to get a person arrested or to get his goods attached. They are only methods of execution. Hence the Act of procedure now enacted is retrospective.

There is no doubt a retrospective Section (Section 3) in a new Act. But that section applies only to suits and proceedings, which could be started either by a debtor or a creditor upon an Act of Insolvency, are neither suits nor proceedings arising out of suits. They do not come within the perviews of section 3 of Act 13 of 1938. That section makes the Act expressly prospective to limited extent of suits and proceedings arising out of suits instituted after 1-7-38. Except to the limited extent the Act being one of procedure is retrospective. Section 3 which is in the nature of an exception has to be interpreted strictly and Insolvency proceedings do not come within the scope of that section.

6. It may be said that if the money is not recovered the creditors suffer. The insolvency court is not a debt collecting office and the Insolvency law is not meant to collect debts from out of the future earnings and to compel the insolvents to work till 16 annas in the rupee is paid. A debtor comes to Court to be declared an Insolvent when he is unable to pay the debts. That is the first requisite of a debtor's petition under section 13 of the Insolvency Act. The required allegation by a petitioner is not a mere matter of form but goes to the foundation of a debtor's right to the claim the benefit of the Insolvency Act (1930 Madras 544). I do not know how the creditors who had objection before to the debtors being adjudged insolvents can now come forward with the cry that attachments must continue till their debts are collected. I do not think that when the new Act explicitly gives relief to workers getting a salary of Rs.50/- and under per month, it can be

denied to them. I am not suggesting to them that the salary of the workers cannot be attached for ever. If the workers whose salary may be under Rs.50/- per month now get an increase making it attachable, or if they get a windfall by legacy or inheritance or otherwise then such property certainly vests in the Insolvency court and comes divisable amongs the creditors. But the earnings of the petitioner as they are at present do not vest in the court and it is illegal to attach them.

7. It is a rule of interpretation that an Act which is meant for the benefit of a particular class should not be interpreted for the benefit of the opposite class. Act 13 of 1938 was primarily enacted for the benefit of the working class on the report of the Royal Commission on Labour. It cannot be interpreted to collect debts in Insolvency cases for the benefit of the money lenders. Any such interpretation may lead to grievious consequences as a result of injustice.

8. The doctrine of relation back which is based on a legal fiction and which has been enunciated in Section 28 clause 7 of the Insolvency Act too can have no application, because we are not concerned with past transfers but with the future earnings of a person which vest forthwith, if they are attachable (See section 28 clauses 4 and 5).

9 The insolvent debtors come to court for relief being unable to pay their debts. It is expected that honest debtors become free men again after obtaining their discharge with a fairly short period (see comentories of A. Ghosh on provincial insolvency Act 1935/ Edition, pages 360 and 361 under Section 43).

That is why a period for the discharge is fixed and a debtor is persisted by annulling the adjudication if he does not apply for discharge within a fixed period

Besides even a decree after twelve years gets time barred. In most of the case, the debts are mostly on pronotes which are accepted upon an affidavit of the party, which have not ripened into decrees and on which no court fee is collected. No process fee too is collected for recovering from out of the earnings every month. It is then to be expected that the Insolvency cases in which such debts have been proved and in which no payments have been recovered for more than three years continuously from the insolvents should be kept pending till the debts are fully discharged or become discharged upto a certain limit. Example of the four cases now under consideration, in Insolvency cases No.20 of 1920-21 the petitioner has been an undischarged insolvent for 18 years.

10. For the above reasons the applications of the petitioners are allowed. Pronounced in Open Court.

Sd/- M.K. Sivasankara Ra

MUNSIFF. 30-11-38

Extracts of Notes on Attachments - Strike Threat.

It has been ascertained that the cause for these requests originated from the previously mentioned first pronouncement of the Munsiff regarding the non-liability in certain cases of Insolvents to be attached. The pronouncement had been received with great satisfaction by the workmen concerned who quickly spread the news to others who on their part at once raised the question amongst themselves as to why exemption from attachment should be confined to Insolvents whilst no relief was allowed in the ordinary case of judgment-debtors

According to our information the Munsiff's Court was crowded on the occasion of the hearing and the announcement reversing the previous decision was received with very great disappointment. This was followed by the receipt on the 6th January by all Superintendents of further letters on the same lines as those previously received but on this occasion to the effect that a Strike would be commenced on 1st February if the Companies continued to deduct money from wages on account of attachments.

In the meantime a letter dated 5th January had been addressed to the Munsiff by the Mining Board requesting that as in the cases of Christians on the occasion of Christmas a general exemption from attachment might be granted in the cases of all Hindus employed by the Mining Companies on t occasion of Pongal which festival is held in January.

The definition of the term "labourer" is controversial, but it has been held in many legal actions as being applicable to unskilled workmen and to such only is the exemption clause (k) applicable. The definition of "skilled" and "unskilled" is explained in the following extract from the Committee's letter to you dated 6th November 1935:-

> 'Skilled workers were defined in the Mysore High 'Court as those who work by their brains as distinc 'from unskilled labourers who work solely by thei 'hands without applying their brains".

The working arrangement referred to is as follows:-

> A schedule of classification of Skilled and Unskilled labour prepared by the Mining Companies is in the possession of and has been accepted by the Munsiff as a basis upon which attachment orders may be issued.
>
> The wages of debtors classified as unskilled are not liable to attachment.
>
> The wages for the first half month of debtors classified as skilled are not liable to attachment, but their wages for the second half month are liable to the extent of:
>
> 2/3rds of such earnings of workmen whose wages exceed the rate of one rupee per day.
>
> 1/2 of such earnings of workmen whose wages are below the rate of one rupee per day.

It may be accepted that the great majority of workmen whose wages are below the rate of one rupee per day come under the classification of unskilled.

From the first it has been appreciated that the question is not strictly within the province of the Mining

Companies and further that the number of men affected by attachment decrees is small compared with the total Field labour strength, but it has had to be taken into consideration that the action of a few discontented men might influence the majority and lead to trouble which would not be confined merely to arguments on the question of attachments but would provide an opportunity for the bringing forward of the usual list of troublesome demands.

On the grounds that a state of emergency has arisen which conceivably may develop into a grave situation affecting the interests of Government, the Mining Companies and labour generally, it may be considered desirable to approach Government for the bringing into force of an Emergency Regulation temporarily prohibiting the issue of attachment orders or granting some form of relief to certain classes of judgment debtors pending an enquiry into the causes of the present unrest in this connection. The justification for this possible action lies in the constantly repeated claim of the great majority of debtors that they have more than repaid the full amount of their debts with high rates of interest, but due to their own ignorance and the nefarious methods of the creditors they are unable to extricate themselves from the clutches of the money-lenders.

Although it has no retrospective effect and affords little, if any, relief to existing debtors, the proposed introduction of the Mysore Money Lenders Bill governing Registration and Licensing, Regulation and Inspection of Accounts, Rates of Interest etc. is a most important measure and will be firmly supported, when it comes before the next Session of the Legislative Council. The proposed bill has been studied carefully and is considered to deal adequately with the future

[illegible]

[illegible]

[illegible]

General and Revenue Secretariat
R. A. & L. C.

File No.

Serial No.

Three members of the Kolar Gold Field Mining Board waited on the First Member yesterday to bring to his notice an apprehension of an alleged strike in their area due to certain orders of the Munsiff's Court there attaching the wages of the labourers there. They represented that in spite of the exemption of wages from attachment, the Court was attaching the wages of labourers and was sending out the warrants to them for execution. The First Member pointed out that these wages were clearly exempt from attachment under Section 60 of the Civil Procedure Code and that if, as represented by them, the wages that were paid weekly, fortnightly or monthly were attached as a 'debt' under Order 21 Rule 46 of the Civil Procedure Code, this attachment appeared to be clearly wrong. Then they stated that by an arrangement among the money-lenders, labourers and themselves, they were allowing the attachement of a certain portion of the wages of t latter half of a month and that they had to give effect to the order of the Court and that the labourer have now realised that their wages are exempt from attachment and that they do not like to continue the mutual arrangement existing till now.

They also represented that they have been receiving anonymous letters threatening a strik that some labourers have also approached them w

threat of strike if no relief was given to them and that they have told the labourers that they are bound by the order of the Court as much as the labourers and the moneylenders.

In their view certain prominent Advocates and Congress workers like Mr. K.T. Bhashyam are setting up these labourers to resort to strike without putting forward their grievances to the Court. They say that they are watching the situation and that it may or may not lead to strike and that their object in coming on deputation was to keep the Government informed of the situation.

The First Member ~~assured~~ told them that Government were ~~ever prepared to~~ would help them in any way that they could in their difficulties and that in consultation with their legal advisers the exact legal ~~position asserted~~ points put forward or briefly the put-forward by the labourers may be communicated to Government, ~~under~~ and that The District Magistrate, Kolar, who ~~also~~ has mentioned ~~something~~ this matter about ~~this~~ on the 20th instant will ~~be asked to~~ would also be asked to send a report ~~the~~ regarding ~~grounds~~ on which the situation has arisen and that Government would consider what action has to be taken on receipt of these communications.

his views as to the relief if any that could be given.

(1st member)

26/1/39

Re 1/39

Dear Mr. Sundara Rao,

Govt. understand that there is some unrest brewing among the labourers in the K.G.F. Mines in connection with the attachment of their wages by the Courts on account of debts due from them to moneylenders. Messrs R.G.K. Morrison, H.H. White and W.R. Cocker of the Mines enquired me 1st Member on the 23rd instant on this matter, but they were not able to furnish full & clear details.

I am desired to request you to direct enquiries upon a) the nature & cause of the alleged unrest if any & come here tomorrow for a discussion with Govt.

labourers are persons

who earn their daily bread

by personal manual

labour or in occupation

which requires ... le or

no art skill or previous

course.

There are very few

cases where the term

'labourer' seems to have

been interpreted. In 5 Bom

it was held that persons

who agree to spin cotton

and to receive a certain

amount of money for a

certain quantity of cotton

spun were held to be

labourers

In 27 Mysore 193,

after it was held that a

person employed by a

mining Company on the K.G.F.

as a watchman was

labourer, though he was

paid monthly wages

The above volun-

Code of Civil Procedure (amendment) BILL.

STATEMENT OF GENERAL PRINCIPLES.

The Code of Civil Procedure (amendment) Act. 1938 amending Section 60 of the Code of Civil Procedure was passed to give effect to the recommendations of the Committee appointed to examine the question of indebtedness of official in Mysore as well as of the Royal Commission on labour. Under this amendment,

(1) wages of labourers and domestic servants and salary to the extent of the first fifty rupees and one half of the remainder of such salary and

(2) salary of any public officer or any servant of Railway Company or local authority to the extent of the first fifty rupees and one half of the remainder of such salary,

are exempt from attachment.

It has however since been found that difficulties have arisen in the interpretation and working of Section 60 of the Code, particularly in regard to the following matters:-

1. The scope of the term 'labourer' and whether it extends to skilled workmen also;

2. whether wages and salary if accumulated could be attached as a debt and

3. whether the Insurance premia, Provident Fund instalments etc., could be deducted from the gross salary before determining the amount of salary available for attachment.

An amendment of Section 60 of the Code of Civil Procedure to make these points clear and to extend the benefits secured by the amendment in 1938 to the persons and to the extent intended by the said amendment has therefore become necessary. It is proposed to amend the Code of Civil Procedure to indicate clearly that skilled labourers are also to benefit to the extent the others do, that wages and salary of all employees even after they are accumulated should be non-liable for attachment and that the salary exempted from attachment is the pay or salary actually drawn after compulsory deductions are made

the scope of the term labourer appears to have been somewhat limited by the decision of the Courts

Code of Civil Procedure (amendment) Bill

STATEMENT OF GENERAL PRINCIPLES.

The Code of Civil Procedure (amendment) Act, 1938 amending Section 60 of the Code of Civil Procedure was passed to give effect to the recommendations of the Royal Commission on labour and of the Committee appointed to -- examine the question of indebtedness in Mysore. Under this amendment,

(1) wages of labourers and domestic servants, and salary to the extent of the first fifty rupees and one half of the remainder of such salary and

(2) salary of any public officer or any servant of Railway Company or local authority to the extent of the first fifty rupees and one half of the remainder of such salary,

are exempt from attachment.

It has however since been found that difficulties have arisen in the interpretation and working of Section 60 of the Code, particularly in regard to the following matters:-

1. The scope of the term 'labourer' i.e. whether it applies only to unskilled workers and whether it ~~extends to~~ includes skilled workers ~~men~~ also;

2. whether wages and salary if accumulated could be attached as ~~a~~ debt and

3. whether ~~in the~~ Insurance premia Provident Fund Instalments etc., could be deducted from the gross salary before determining the amount of salary available for attachment.

The scope of the term 'labourers' appears to have been somewhat limited

limited by the decision of the Courts. The wages of labourers and domestic servants were exempt from attachment under the old Code-of-Civil Procedure also. ~~In 5 Bombay, 132,~~ It has been held by Courts in some cases that labourers are persons who earn their daily bread by personal manual labour or in occupations which require little or no art, skill, or previous education. This decision has been followed in 27. Mysore High Court Reports, 193, and ~~it was held~~ therein that a person employed by a mining company in the K.G.F. as a watchman is a labourer though he was paid monthly wages. Thus it would seem that unskilled workmen would get the benefit of the exemption under the term labourers in this section while skilled workers get the benefit (under?) so that skilled workmen would not be considered as labourers.

Such a distinction appears to prevail in practice in the K.G.F's Courts. There the wages of unskilled labourers are exempt from attachment while those of skilled labourers are made liable to attachment.

It is obvious that such a distinction will remove a large category of workmen upon the scope of the exemption of the K.G.F. from this exemption. Workmen like maistries, fitters, engine-drivers, machine workmen blacksmiths, blasters, drillers and such others would have to be considered as skilled workmen. In fact, except the ordinary coolie who digs earth or carries stuff, all the other workmen in the K.G.F. will have had some previous training and some amount of skill and so they would be skilled workmen. Most of the so-called skilled workmen do not get high wages get wages of about a rupee a day or less and they are not far better than unskilled workmen in respect of wages. It is

really hard that they should not get any exemption at all.

As the section stands at present the wages of skilled workmen get no sort of exemption, not even the fifty rupees limit, since what they get is not considered as salary. Many of the skilled labourers have their remuneration fixed on the daily rate basis. Their remuneration would more likely come under the term wages' than under the term 'salary'. According to the section as it stands now the wages of skilled labourers would not come under the exemption. This is the only class of workmen that do not get any exemption.

It would be a real hardship that the wages of a machine workman or a maistry or a fitter or the driver of an engine, amounting to Rs.30/- a month. should be liable to attachment on the basis of a doubtful distinction that he is a skilled labourer. It is the policy of the law to destroy the credit of the workman. as stated by the Royal Commission on Labour, by making it more difficult to get his remuneration attached. It is necessary in the interests of organised industries that a skilled labourer also should be allowed some means of subsistence by giving him the exemption from attachment of wages or salary upto Rs.50 limit at least.

Under Section 60 of the Civil Procedure, debts are attachable. Though under the exemption clauses wages and salary are not attachable as wages and salary it is possible to hold that they could be attach-

attached as debt if they get accumulated in the hands of the employer. To avoid any such attachment being effected on the basis of the remuneration being considered a debt, an explanation has been added to Section 60 as explanation I. ~~By the amending~~ under S.60 Expl Act XIII of 1938 ~~a clause was added to this explanation the result of which is that~~ wages of ~~unskilled~~ labourers & domestic servants and salary of officials, etc., are exempt from attachment ~~even though~~ they ~~have become~~ actually payable. But the salary of private officials & workmen is not exempt from attachment if it has become actually payable. It does not seem to be fair to grant exemption on the one hand and to take it away on the other by a different interpretation. This exemption from attachment after the salary has become actually payable should be allowed to private employees also.

The ~~indicate~~ whether compulsory deductions on account of Insurance Premium, Provident Fund, etc., have to be deducted from the total monthly emoluments for determining the salary liable to attachment. It is desirable that this point is made clear in the Section ~~itself as Courts do not seem to interpret consistently in regard to this~~.

It is therefore proposed to amend the Code of Civil Procedure to clear these doubts.

NOTIFICATION

*No. 2794—L. C., dated Bangalore, 29th November 1937*

Under Rule 8 of the Rules for the conduct of business of the Mysore Legislative Council, the accompanying Bill further to amend the Code of Civil Procedure, 1911, for certain purposes is published for general information with the statement of objects and reasons.

By Order,

A. SUNDARARAJA R

*Secretary,*

*Mysore Legislative Council.*

**A Bill further to amend the Code of Civil Procedure, 1911, for certain purposes.**

Whereas it is expedient further to amend the Code of Civil Procedure, 1911, for the purposes hereinafter appearing; It is hereby enacted as follows:—

1. This ~~Regulation~~ Act may be called the Code (Short title) of Civil Procedure Amendment ~~Regulation~~ Act, 193 .

2. In the proviso to sub-section (1) of Section 60 of the Code of Civil Procedure, 1911.— Amendment of Section 60, ~~Regulation~~ III of 1911.

(*a*) for clauses (*h*) and (*i*), the following clauses shall be substituted, namely:—

"(*h*) the wages of labourers and domestic servants, whether payable in money or in kind; ~~and~~

(*ha*) wages and salary, to the extent of the first fifty rupees and one-half the remainder of such salary; (of a other than labourer and domestic servant)

(*i*) the salary of any public officer or of any servant of a railway company or local authority to the extent of the first fifty rupees and one-half the remainder of such salary;

Provided that, where the whole or any part of the portion of ~~such~~ salary liable to attachment under clause (*ha*) of (*i*) has been under attachment, whether continuously or intermittently for a total period of

wages and

twenty-four months, such portion shall be exempt from attachment until the expiry of a further period of twelve months and where such attachment has been made in execution of one and the same decree, shall be finally exempt from attachment in execution of that decree;

(*b*) for clause (*k*), the following clause shall be substituted, namely:

(*k*) any allowance forming part of the emoluments of any public officer or of any servant of a railway company or local authority which the Government may by Notification in the Official Gazette declare to be exempt from attachment, and any subsistence grant or allowance made to any such officer or servant while under suspension."

The explanation at the end shall be renumbered as explanation one and to the explanation so renumbered the following words shall be added:—

"and in the case of salary other than salary of a public officer or a servant of a railway company or local authority the attachable portion thereof is exempt from attachment until it is actually payable," and

(*d*) after the explanation as so renumbered there shall be added the following explanation namely:—

"*Explanation 2.*—In clauses (*h*) and (*i*), 'Salary' means the total monthly emoluments excluding any allowance declared exempt from attachment under the provisions of clause (*k*) derived by a person from his employment whether on duty or on leave."

Retrospective effect.

The amendments made by Section 2 shall not have effect in respect of any proceedings arising out of any suit instituted before the first day of June, nineteen hundred and thirty-eight.

## Statement of Objects and Reasons.

The Royal Commission on Labour drew attention to the indebtedness prevailing among certain classes of

workers and expressed the view that this was due mainly to the credit enjoyed by them and the facilities afforded to creditors by the law relating to the attachment of salaries. With a view to reducing credit, the Commission recommended that wages and salaries of workmen receiving less than Rs. 300 a month should be entirely exempted from attachment. The Government of India after consulting the Provinces came to the conclusion that Rs. 100 was a more suitable limit than Rs. 300 and they also considered that the recommendations made by the Royal Commission which applied to workmen should apply equally to the public officers, servants of local bodies and railway servants as well. Action was accordingly taken by the Government of India to amend Section 60 of the Code of Civil Procedure relating to the attachment of salary and it has been suitably amended by Act IX of 1937.

2. The Committee appointed to examine the question of indebtedness of officials in Mysore have also recommended that in respect of attachment of salary by civil courts the exemption limit may be raised from Rs. 20 to Rs. 50.

3. At present in Mysore the salary wholly exempt from attachment is Rs. 20 and where the salary is Rs. 40 Rs. 20 is exempt and moiety of it in other cases. Having regard to the conditions prevailing in Mysore, Government consider that salary up to and inclusive of Rs. 50 and also one-half of the remainder of such salary should be exempt from attachment. It is accordingly proposed to amend Section 60 of the Code of Civil Procedure on the lines of the amended Act IX of 1937 of British India

4. The Bill empowers Government to exempt any allowance forming part of the emoluments of any public officer or of any servant of a railway company or local authority and any subsistence grant or allowance made to any such officer or servant while under suspension.

5. It also allows the attachment of leave allowances of these debtors which was hitherto exempt from attachment.

6. It further provides that the amending legislation shall apply to all suits instituted after a certain date. The existing decree and suits will not therefore be affected.

Printed by the Superintendent at the Government Press, Bangalore.

NOTIFICATION

*Order No. P. 310—Legis. 6-38-1—dated Bangalore the 15th July 1938.*

Ordered that the accompanying Act further to amend the Code of Civil Procedure which received the assent of His Highness the Maharaja, on the eighth day of July 1938, be published as Act No. XIII of 1938, in the *Mysore Gazette*, for general information.

By Order,

C. SUBRAHMANYA AIYAR,

Offg. *Secretary to Government,*
*General Department.*

# ACT No. XIII OF 1938.

(*Received the assent of His Highness the Maharaja on the Eighth day of July 1938.*)

## An Act further to amend the Code of Civil Procedure, 1911 for certain purposes.

Whereas it is expedient further to amend the Code of Civil Procedure, 1911, for the purposes hereinafter appearing; it is hereby enacted as follows:—

Short title.

1. This Act may be called the Code of Civil Procedure (Amendment) Act, 1938.

Amendment of section 60 Act III of 1911.

2. In the proviso to sub-section (1) of section 60 of the Code of Civil Procedure, 1911.—

(*a*) for clauses (*h*) and (*i*), the following clauses shall be substituted, namely:—

"(*h*) the wages of labourers and domestic servants, whether payable in money or in kind; and

(of all employees other than labourers and domestic servants)

(*a*) salary, to the extent of the first fifty rupees and one-half the remainder of such salary;

(*i*) the salary of any public officer or of any servant of a railway company or local authority to the extent of the first fifty rupees and one half the remainder of such salary:

Provided that, where the whole or any part of the portion of ~~such~~ salary liable to attachment has been under attachment, whether continuously or intermittently for a total period of twenty-four months, such portion shall be exempt from attachment until the expiry of a further period of twelve months and where such attachment has been made in execution of one and the same decree, shall be finally exempt from attachment in execution of that decree.

(*b*) for clause (*k*), the following clause shall be substituted, namely :—

(*k*) any allowance forming part of the emoluments of any public officer or of any servant of a railway company or local authority which the Government may by notification in the Official Gazette declare to be exempt from attachment, and any subsistence grant or allowance made to any such officer or servant while under suspension ;

(*c*) the *Explanation* at the end shall be renumbered as *Explanation* 1, and to the *Explanation* so renumbered the following words shall be added, namely :—

"and in the case of salary other than salary of a public officer or a servant of a railway company or local authority the attachable portion thereof is exempt from attachment until it is actually payable," and

(*d*) after the *Explanation* as so renumbered the following *Explanation* shall be added, namely :—

"*Explanation* 2.—In clauses (*h*) and (*i*), salary means the total ~~monthly~~ emoluments excluding any allowance declared exempt from attachment under the provisions of clause (*k*) derived by a person from his employment whether on duty or on leave.

Retrospective.

3. The amendments made by section 2 shall not have effect in respect of any proceedings arising out of any suit instituted before the first day of July nineteen hundred and thirty-~~eight~~nine.

MIRZA M. ISMAIL
*Dewan.*

**Price: 0-0-3.**

Printed by the Superintendent at the Government Press, Bangalore.

Bill further to amend the Code of Civil Procedure, 1911, for certain purposes.

WHEREAS it is expedient further to amend he Code of Civil Procedure, 1911, for the urposes hereinafter appearing; it is hereby nacted as follows:-

1. This Act may be called the Code of Civil rocedure Amendment Act, 1939.

In the proviso to subsection (1) of Section 60 of the Code of Civil Procedure, 1911

(a) in clause (h) delete the words nd salary, to the extent ..... of such salary' and insert the following as clause (ha)

> wages and salary of all employees other than labourers and domestic servants, to the extent of the first fifty rupees and one-half the remainder of such salary;"

(b) in the proviso under clause (i), r the words 'such salary liable to attachment bstitute the words 'wages and salary liable attachment under clauses (ha) and (i);

(c) in Explanation 1, add item (ha) afte em (h) and omit the words 'and in the case salary other than ..... ..... it is actually yable';

(d) For Explanation 2 substitute the following:

" In clauses (ha) and (i), 'wages and salary' mean the total emoluments calculated on a monthly basis, excluding (i) deductions declared by Government by notification in the official gazette to be exempt from attachment and (ii) any allowance declared exempt from attachment under the provisions of clause (k), derived by a person from his employment whether on duty or on leave."

3. The amendments made by section 2 shall not have effect in respect of any proceedings arising out of any suit instituted before the first day of July nineteen hundred and thirty-nine.

Code of Civil Procedure (amendment) Bill

STATEMENT OF GENERAL PRINCIPLES.

The Code of Civil Procedure (amendment) Act, 1938, amending Section 60 of the Code of Civil Procedure, was passed to give effect to the recommendations of the Roval Commission on Labour and of the Committee appointed to examine the question of indebtedness in Mysore. Under this amendment,

(1) wages of labourers and domestic servants, and salary to the extent of the first fifty rupees and one half of the remainder of such salary and

(2) salary of any public officer or any servant of Railway Company or local authority to the extent of the first fifty rupees and one half of the remainder of such salary,

are exempt from attachment.

It has however since been found that there are difficulties ~~have arisen~~ in the interpretation and working of Section 60 of the Code. particularly in regard to the following matters:

1. The scope of the term 'labourer' i.e., whether it applies only to unskilled workers and whether it includes skilled workers also:

2. Whether wages and salary if accumulated could be attached as debt and

3. Whether insurance premia, Provident Fund instalments etc., could be deducted from the gross salary before determining the amount of salary available for attachment.

The scope of the term 'labourers' appears to have been somewhat limited by the decision of the Courts. The wages of labourers and domestic servants were exempt from attachment under the old Code of Civil Procedure also. It has been held by Courts in some cases that "labourers" are persons who earn their livelihood by personal manual labour or in occupations which require little or no art, skill, or previous education. It would thus appear that only unskilled workers would get the benefit of the exemption in this section while skilled workers would not get the benefit.

It is obvious that such a distinction will remove from the of the exemption a large category of workmen like maistries, fitters, engine-drivers, machine workmen, blacksmiths, blasters, drillers and such others who would have to be considered as skilled workmen. Most of the so-called skilled workmen do not get high wages and they are not far better than unskilled workmen in respect of their earnings. It would be a hardship that they should not get any exemption at all.

As the section stands at present the wages of most skilled workmen do not appear to come under any sort of exemption, not even the fifty

fifty rupees limit, since their remuneration which is fixed on the daily rate basis is not considered as being salary. This is the only class of workmen that do not get any exemption.

It is necessary in the interests of organised industries that even a skilled labourer in debt should be allowed some means of subsistence by giving him the benefit of exemption from attachment of wages or salary up to the fifty rupees limit at least.

Under Section 60, Explanation I as amended by Act XIII of 1938, wages of labourers and domestic servants and salary of officials, etc., are exempt from attachment whether before or after they are actually payable. But the salary of private officials and workmen is not exempt from attachment if it has become actually payable. There is no necessity for the distinction and this exemption from attachment after the salary has become actually payable should be allowed to private employees also.

There is no definite indication in section 60 whether compulsory deductions on account of Insurance a subscription to Provident Fund, etc., have to be deducted from the total monthly emoluments for determining the salary liable to attachment. It is possible to interpret that salary means the salary actually drawn, i.e., the net salary after deducting deductions at source. It is desirable to have this point made clear.

It is therefore proposed to amend the Code of Civil Procedure ~~to clear these doubts.~~ with a view to a clearer elucidation of the points mentioned above.

Code of Civil Procedure (amendment) Bill.

STATEMENT OF GENERAL PRINCIPLES.

The Code of Civil Procedure (amendment) Act. 1938 amending Section 60 of the Code of Civil Procedure was passed to give effect to the recommendations of the Royal Commission on labour and of the Committee appointed to examine the question of indebtedness in Mysore. Under this amendment,

(1) wages of labourers and domestic servants and salary to the extent of the first fifty rupees and one half of the remainder of such salary and

(2) salary of any public officer or any servant of the Railway Company or local authority to the extent of the first fifty rupees and one half of the remainder of such salary,

are exempt from attachment.

It has since been found however that there are difficulties in the interpretation and working of Section 60 of the Code, particularly in regard to the following matters:-

1. The scope of the term 'labourer' i.e., whether it applies only to unskilled workers and whether it includes skilled workers also;

2. Whether wages and salary if accumulated could be attached as debt and

3. Whether insurance premia, subscription to provident funds etc., could be deducted from the gross salary before determining the amount of salary available for attachment.

The scope of the term 'labourers' appears to have been somewhat limited by the decision of the Courts. The wages of labourers and domestic servants were exempt from attachment under the old Code of Civil Procedure also. It has been held by Courts in some cases that "labourers" are persons who earn their daily bread by personal manual labour or in occupations which require little or no art, skill or previous education. It would thus appear that only unskilled workers would get the benefit of the exemption in this section while skilled workers would not get the benefit.

It is obvious that such a distinction will remove from the scope of the exemption a large category of workmen like mistries

fitters, engine drivers, machine workmen, blacksmiths, blasters, drillers and such others who would have to be considered as skilled workmen. Most of the so-called skilled workmen do not get high wages and they are not far better than unskilled workmen in respect of their earnings. It would be a hardship if they should get no exemption at all.

As the section stands at present, the wages of most skilled workmen do not appear to come under any sort of exemption, not even the fifty rupees limit, since their remuneration which is fixed on the daily rate basis is not considered as being salary. This is the only class of workmen that do not get any exemption.

It is necessary in the interests of organised industries that even a skilled labourer in debt should be allowed some means of subsistence by giving him the benefit of exemption from attachment of wages or salary up to the fifty rupees limit at least.

Under Section 60 Explanation I as amended by Act XIII of 1938, wages of labourers and domestic servants, and salary of officials etc., are exempt from attachment whether before or after they are actually payable. But the salary of private officials and workmen is not exempt from attachment if it has become actually payable. There is no necessity for the distinction and this exemption from attachment after the salary has become actually payable should be allowed to private employees also.

There is no definite indication in Section 60, whether compulsory deductions on account of insurance premia, subscriptions to provident funds etc., have to be deducted from the total monthly emoluments for determining the salary liable to attachment. It is possible to interpret that salary means the salary actually drawn, i the net salary after deducting deductions at source. It is desirable to make this point clear.

It is therefore proposed to amend the Code of Civil Procedure with a view to a clearer elucidation of the points mentioned above.

Government of His Highness the Maharaja of Mysore.

G.1057-64 General and Revenue Secretariat.

Dated Bangalore, 21st August 1939.

OFFICIAL MEMORANDUM.

A meeting of the Select Committee appointed to consider the Code of Civil Procedure (amendment) Bill, will be held in the Chambers of the First Member of Council, Old Public Offices Buildings, Bangalore at 2 P.M. on Saturday the 2nd September 1939.

By Order,

Secretary to the Committee

To

The Members of the Committee.

CODE OF CIVIL PROCEDURE (AMENDMENT) BILL.

| Present Section. | Proposed amendment. |
|---|---|
| 60. (1) The following property is liable to attachment and sale in execution of a decree, namely - | 60.(1) The following property is liable to attachment and sale in execution of a decree, namely - |
| x x | x x |
| Provided that the following particulars shall not be liable to attachment or sale, namely - | Provided that the following particulars shall not be liable to attachment or sale, namely - |
| x x | x x |
| (h) The wages of labourers and domestic servants whether payable in money or in kind; and salary, to the extent of the first fifty rupees and one half the remainder of such salary; | (h) The wages of labourers and domestic servants whether payable in money or in kind; |
| | (ha) Wages and salary of all employees other than labourers and domestic servants, to the extent of the first fifty and one half the remainder of such salary; |

(i) The salary of any public officer or of any servant of a Railway Company or local authority to the extent of the first fifty rupees and one half the remainder of such salary;

Provided that, where the whole or any part of the portion of such salary liable to attachment, has been under attachment, whether continuously or intermitently for a total period of twenty four months, such portions shall be exempt from attachment until the expiry of a further period of twelve months and where such attachment has been made in execution of one and the same decree, shall be finally exempt from attachment in execution of that decree;

x x

Explanation. 1. The particulars mentioned in clauses (g),(h), (i),(j),(k),(n), and (q) are exempt from attachment or sale whether before or after they are actually payable and in the case of salary other than salary of a public officer or a servant of a railway company or local authority the attachable portion thereof is exempt from attachment until it is actually payable:

(1) The salaryx of any public officer or of any servant a Railway Company or local authority to the extent of the first fifty rupees and one half the remainder of such salary,

Provided that, where the whole or any part of the portion of wages and salary liable to attachment under clauses (ha) and (i) , whether continuously or intermittently for a total period of twenty four months, such portion shall be exempt from attachment until the expiry of a further period of twelve months and where such attachment has been made in execution of one and the same decree, shall be finally exempt from attachment in execution of that decree;

x x

Explanation.1. The particulars mentioned in clauses (g), (h), (ha), (i),(j),(k),(n), and (q) are exempt from attachment or sale whether before or after they are actually payable;

Explanation. 2. In clause (h) and (i), "salary" means the total monthly emoluments, excluding any allowance declared exempt from attachment under the provisions of clause (k) derived by a person from his employment whether on duty or on leave.

Explanation.2. In clauses (ha) and (i) "wages and salary" mean the total emoluments calculated on a monthly basis excluding (i) deductions declared by Government by notification in the official Gazette to be exempt from attachment and (ii) any allowance declared exempt from attachment under the provisions of clause (k), derived by a person from his employment whether on duty or on leave.

18th September 1939.

No.L.1969-76

Dear Sir,

I am desired to send herewith a copy of the report of the Select Committee on the Code of Civil Procedure (amendment) Bill and to request that the same may be returned very earl with your approval thereon.

Yours sincerely,

To

The Members of the Committee.

# THE CODE OF CIVIL PROCEDURE (AMENDMENT) BILL

## SELECT COMMITTEE REPORT.

We the members of the Select Committee to which the Code of Civil Procedure (amendment) Bill was referred have carefully considered the several clauses of the Bill and have only one suggestion to make.

We recommend that clause 3 of the Bill which restricts the application of this amending Act to proceedings arising out of suits instituted after 1st day of July 1939 may be omitted so that the Act when it comes into ~~effect~~ force may apply to all proceedings irrespective of the date of the filing of the suit.

As we have not materially altered the Bill, we consider that it need not be republished

CODE OF CIVIL PROCEDURE (AMENDMENT) BILL.

1. Mr. Benn White.
2. " G.Ramanuja Iyengar.
3. " Mahomed Abbas Khan.
4. " H.B.Gundappa.
5. " M.L.Nagappa Setty.
6. " Mirle N.Lakshminaranappa.
7. " M.S.Ramchendra Rao.
8. " C.Subrahmanya Aiyer.

FIRST MEMBER OF COUNCIL-CHAIRMAN.

ting on Saturday 2nd September 1939.-- 2 p.m.

## CODE OF CIVIL PROCEDURE (AMENDMENT) BILL.

1. Mr. Benn White.
2. " G.Ramanuja Iyengar.
3. " Mahomed Abbas Khan.
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8. " C.Subrahmanya Aiyer.

FIRST MEMBER OF COUNCIL-CHAIRMAN.

eting on Saturday 2nd September 1939.-- 2 p.m.

GOVERNMENT OF MYSORE.

# DEPARTMENT OF INDUSTRIES AND COMMERCE.

L.Muniswami, Esq., B.A.,

Asst. DIRECTOR.

no. A1- 39.40/Enc/

Bangalore, dated 20th Sept.1939.

Dear Sir,

I am desired to return herewith the copy of the Report of the Select Committee on the Code of Civil Procedure (amendment) Bill duly approved by the Director, sent with your d.o.letter No.P.1969-76 dated 18th Sept.1939.

Yours sincerely,

L. Muniswami 20/9/39

B.K. Ramakrishnaiya, Esq., M.A., LL.B.,
Assistant Secretary to Government,
Law Department,
Public Offices,
Bangalore.

SRS.

## [illegible] Bill.

## [illegible] Bill without.

We the members of the Select Committee to which the Code of Civil Procedure (Amendment) Bill was referred have carefully considered the several clauses of the Bill and have only one suggestion to make.

We recommend that clause 5 of the Bill which restricts the application of this amending Act to proceedings arising out of suits instituted after 1st day of July 1909 may be omitted so that the Act when it comes into force may apply to all proceedings irrespective of the date of the filing of the suit.

As we have not materially altered the Bill, we consider that it need not be republished.

THE CODE OF CIVIL PROCEDURE (AMENDMENT) BILL.

SELECT COMMITTEE REPORT.

We the members of the Select Committee to which the Code of Civil Procedure (amendment) Bill was referred have carefully considered the several clauses of the Bill and have only one suggestion to make

We recommend that clause 3 of the Bill which restricts the application of this amending Act to proceedings arising out of suits instituted after 1st day of July 1939 may be omitted so that the Act when it comes into force may apply to all proceedings irrespective of the date of the filing of the suit.

As we have not materially altered the Bill, we consider that it need not be republishe

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islative Counc

# THE HIGH COURT OF CIVIL PROCEDURE (AMENDMENT) BILL.

## SELECT COMMITTEE REPORT

e the members of the Select Committee to which the
Court of Civil Procedure (Amendment) Bill was referred
ave carefully considered the several clauses of the Bill
nd have only one suggestion to make.

e recommend that clause 3 of the Bill which restricts
he application of this amending Act to proceedings arising
ut of suits instituted after 1st day of July 1939 may be
mitted so that the Act when it comes into force may apply
o all proceedings irrespective of the date of the filing
f the suit.

As we have not materially altered the Bill, we consider
hat it need not be republished.

DHARMAPRAVARTHA
M. NAGAPPA SETTY, (M. R. A. R.D.) M.L.C
COFFEE & RUBBER PLANTER,
MANAGING MEMBER,
M. LACHIA SETTY & SONS.
DIRECTOR,
THE MYSORE SUGAR CO., LTD., R.D.
& MEMBER, COFFEE CESS COMMITTEE.

CODES USED:
A. B. C. 5TH EDITION.
UNIVERSAL TRADE CODE
BENTLEY'S COMPLETE PHRASE CODE.
PRIVATE.

CHIKMAGALUR,
MYSORE STATE,
S. INDIA.

Select Committee on the Code of Civil Procedure Amendment) Bill 19. 9. 1939

To

B. K. Ramakrishnaiah, M.A. B.L.
Assistant Secretary to Government.
Legislative & Private Secretariat
Bangalore

Dear Sir

I am in receipt of your D.O. No. P 1969-76 dated 18.9.39 together with the enclosure

I am sending herewith the report of the Select Committee on the Code of Civil Procedure (Amendment) Bill duly approved and signed

Yours Sincerely
M. Nagappa Setty

TELEGRAPHIC ADDRESS:
"OPIUM." OORGAUM.

THE OOREGUM GOLD MINING COMPANY OF INDIA, LIMITED,
[Incorpo[illegible]ngland.]

OORGAUM

MYSORE STATE,

S. INDIA.

*Please quote this*
*Ref. No.* D.O.

September 19. 1939.

B.K.Ramakrishnaiya, Esq., M.A., LL.B.
Assistant Secretary to Government,
General & Revenue Secretariat,
Bangalore.

Dear Sir,

In reply to your D.O. No. P.1969-76 of 18th September 1939, I return the copy of the report of the Select Committee on the Code of Civil Procedure (Amendment) Bill, duly approved and signed by me.

Yours sincerely,

G. Krishnaiah

Superintendent.
and
Member, Mysore Legislative Council.

# THE CODE OF CIVIL PROCEDURE (AMENDMENT) BILL:

# SELECT COMMITTEE REPORT.

We the members of the Select Committee to which the Code of Civil Procedure (amendment) Bill was referred have carefully considered the several clauses of the Bill and have only one suggestion to make.

We recommend that clause 3 of the Bill which restricts the application of this amending Act to proceedings arising out of suits instituted after 1st day of July 1939 may be omitted so that the Act when it comes into force may apply to all proceedings irrespective of the date of the filing of the suit.

As we have not materially altered the Bill, we consider that it need not be republished.

H. B. GUNDAPPA, B.A., B.L.,
Member,
Mysore Legislative Council.

Hassan,
September 1939.

Dear Sir,

With reference to your D.O.No.P. 1969-76 dated the 18th September 1939 forwarding a copy of the report of the Select Committee on the Code of Civil Procedure (amendment) Bill and requesting that the same might be returned very early with my approval thereon, I return herewith the same, duly approved.

Yours sincerely,
H. B. Gundappa.

B. K. RAMAKRISHNAIYA, Esq., M.A., B.L.,
Assistant Secretary to Government,
General and Revenue Secretariat,
B a n g a l o r e.

# THE CODE OF CIVIL PROCEDURE (AMENDMENT) BILL.

## SELECT COMMITTEE REPORT.

We the members of the Select Committee to which the Code of Civil Procedure (amendment) Bill was referred have carefully considered the several clauses of the Bill and have only one suggestion to make.

We recommend that clause 3 of the Bill which restricts the application of this amending Act to proceedings arising out of suits instituted after 1st day of July 1939 may be omitted so that the Act when it comes into force may apply to all proceedings irrespective of the date of the filing of the suit.

As we have not materially altered the Bill, we consider that it need not be republished.

T[illegible] (No. 2) Bill.

[illegible]

[illegible] the members of the Select Committee to which the Bill of [illegible] procedure (amendment) Bill was referred have carefully considered the several clauses of the said Bill and have only the alteration to make.

We recommend that clause 3 of the Bill which restricts the application of this amending Act to proceedings in suits out of suits instituted after 1st day of July 1905 be omitted so that the Act when it comes into force may apply to all proceedings irrespective of the date of the institution of the suit

As we have not materially altered the Bill, we think that it need not be republished.

1995/P

B. K. RAMAKRISHNAIYA, M.A. LL.B.,
Assistant Secretary to Government.

GENERAL AND REVENUE SECRETARIAT,

Bangalore, 18th September 1939.

D. O. No. F. 1969-76

Dear Sir,

I am desired to send herewith a copy of the report of the Select Committee on the Code of Civil Procedure (amendment) Bill and to request that the same may be returned very early with your approval thereon.

Yours sincerely,

B K Ramakrishnaiya

n Bahadur
Mahomed Abbas Khan,
Member, Mysore Legislative Council,
Arcot Srinivasachar Street,
Bangalore.

Dear Sir,
I am returning herewith with thanks
Copy of the Report of the Select Committee
duly approved
21st September 1939

Yours sincerely
Mohammed Abbas Kh

B. K. RAMAKRISHNAIYA, M.A. LL.B.,
Assistant Secretary to Government.

GENERAL AND REVENUE SECRETARIAT,

Bangalore, 18th September 1939.

D. O. No. P. 1969-76

18/9/39

Dear Sir,

I am desired to send herewith a copy of the report of the Select Committee on the Code of Civil Procedure (amendment) Bill and to request that the same may be returned very early with your approval thereon.

Yours sincerely,

B K Ramakrishnaiya

C. Subrahmanya Aiyar, Esq., B.A., B.L.,
Secretary to Government, Law Department,
Bangalore.

Approved

19/9/39

# THE CODE OF CIVIL PROCEDURE (AMENDMENT) BILL.

## SELECT COMMITTEE REPORT.

We the members of the Select Committee to which the Code of Civil Procedure (amendment, Bill was referred have carefully considered the several clauses of the Bill and have only one suggestion to make.

We recommend that clause 3 of the Bill which restricts the application of this amending Act to proceedings arising out of suits instituted after 1st day of July 1939 may be omitted so that the Act when it comes into force may apply to all proceedings irrespective of the date of the filing of the suit.

As we have not materially altered the Bill, we consider that it need not be republished

THE CODE OF CIVIL PROCEDURE (AMENDMENT) BILL

SELECT COMMITTEE REPORT.

We the members of the Select Committee to which the Code of Civil Procedure (amendment) Bill was referred have carefully considered the several clauses of the Bill and have only one suggestion to make.

We recommend that clause 3 of the Bill which ~~provides for a retrospective effect~~ restricts the application of this amending Act to proceedings arising out of rights ~~be given to the Act~~ may be omitted so that the Act ~~may~~ when it comes into ~~effect from the date of its promulgation into law~~ effect may apply to all proceedings in respect of the date of the filing of the suit.

As we have not materially altered the Bill, we ~~recommend~~ consider that it need not be re-published.

DRAFT FINAL NOTE.

The Code of Civil Procedure (amendment) Act, 1938 amending Section 60 of the Code of Civil Procedure was passed to give effect to the recommendations of the Royal Commission on Labour and of the committee appointed to examine the question of indebtedness in Mysore. Under this amendment ——

(a) wages of labourers and domestic servants, and salary to the extent of the first fifty rupees and one half of the remainder of such salary

and

(2) salary of any public officer or any servant of a Railway Company or local authority to the extent of the first fifty rupees and one half of the remainder of such salary

are exempted from attachment.

It has since been found however that there are difficulties in the interpretation and working of section 60 of the Code particularly in regard to the following matters:—

(1) the scope or the term labourer i.e. whether it applies only to unskilled workers ~~and whether it~~ or includes skilled workers also;

(2) whether wages and salary if accumulated could be attached as debt and

3) whether insurance premia subscriptions to provident funds etc, could be deducted from the gross salary

salary before determining the amount of salary available for attachment.

It is therefore proposed to amend the Code of Civil Procedure with a view to a clearer elucidation of the points mentioned above.

The Dewan and the Second Member of Council have agreed to the proposal. I solicit the gracious sanction of His Highness to place the general ~~Rules~~ Principles of the Bill before the ensuing Session of the Representative Assembly and to introduce the Bill in the Legislative Council in due course.

Member of Council.

10.6

Mirle N. Lakshminaranappa, Esq
~~XXX.NAGESVARA IYER, Esq., B.A., B.L.~~ B.A., LL.B.,
Government Advocate.

GOVERNMENT ADVOCATE'S CHAMBERS,
PUBLIC OFFICES,
Bangalore, 28th Sept. 1939

REV. SECRET
29 SEP 1939

D. O. No. 45 110/P

Dear Mr. Ramakrishnaiya,

I am returning herewith, duly approved, the Draft Report of the Select Committee on the Bill to amend the Code of Civil Procedure, sent with your letter No. P. 1969-76 dated the 18th September 1939

Yours sincerely,

Mirle N. Lakshminaranappa

B. K. Ramakrishnaiya, Esq., M.A., LL.B.,
Secretary,
Select Committee,
Bangalore.

TH[illegible] (Amendment) Bill.

[illegible]

[illegible] the members of the Select Committee to which the Code of Civil Procedure (Amendment Bill was referred have carefully considered the several clauses of the said Bill and have only one suggestion to make.

We recommend that clause 3 of the Bill which fixes the application of this amending Act to proceedings in suits instituted after 1st day of July 1938 be omitted so that the Act when it comes into force may apply to all proceedings irrespective of the date of the filing of the suit.

As we have not materially altered the Bill, we consider that it need not be republished.

Gracious approval of His Highness was accorded in May 1939 to place before the Representative Assembly the Statement of General Principles of a Bill to amend the Code of Civil Procedure, 1911.

The General Principles were accordingl considered by the Representative Assembly during the Birthday session and were accepted by them. The Bill itself was thereafter -- published and introduced into the Legislative Council in the Budget Session of 1939 and was referred to a Select Committee.

The Report of Select Committee thereon was considered by the Legislative Council at the Meeting held on the 22nd instant and was passed by that Body.

I now solicit gracious sanction of His Highness to promulgate the Bill into law.

First Member of Council.

a) Motion that the bill, published under Rule
o of the Rules of Business, be read in Council.

he FIRST MEMBER ( Rajamantrapravina N.
Madhava Rau) Sir,

Mr. T. RAMACHANDRA: Sir. I welcome this measure on behalf of the large number of skilled workmen who are not deriving the advantages of the previous legislation. But I am afraid that the new clause suggested in the amendment, namely 'other than labourers and domestic servants' might perhaps deprive this class of labourers i.e., the unskilled labourers who form quite a a very large majority, from the benefits of the measure. Although it is stated that the Code contains provisions necessary for protecting this class of persons, still ~~in~~ it would be better if in the new measure particular reference is made that ~~in~~ ~~six~~ skilled labourers along with the other labourers will derive the advantages of the piece of legislation, because it would mean then that it would apply to all classes.

Mr. C. SUBRAHMANYA AIYAR: Unskilled labourers are already protected.

Mr. T. RAMACHANDRA: Then, why is the bill stated as The Criminal Procedure Code (amendment) Bill?

Mr. C. SUBRAHMANYA AIYAR: There was a doubt whether it included skilled labourers. That is made clear now.

Mr. T. RAMACHANDRA: I desire to know whether this amendment has been adopted in British Indian enactment, because when the original amendment was made I well remember that we followed the change effected in the British Indian legislation

Mr. N. MADHAVA RAU: Even then, it was pointed out by some of the members in the Assembly that a doubt ~~may~~ might arise.

Mr. T. RAMACHANDRA: But have the courts in British India interpreted the law to justify our doubt? How did this difficulty arise? Why has not this difficulty been felt up till now?

Mr. N. MADHAVA RAU: Is the Hon. Member opposing the measure?

Mr. T. RAMACHANDRA: I welcome this measure. But what I want is protection to be extended to ordinary labourers.

Mr. N. MADHAVA RAU: Ordinary labourers are already protected. To remove the doubt with regard to the wording of the Act as amended last year, we are proposing this amendment.

Mr. T. RAMACHANDRA: I hope the select committee will go into this question.

Mr. N. MADHAVA RAU: Both the amendment proposed and the original provision of the Civil Procedure Code must be read together Then the idea will be clear

Mr. T. RAMACHANDRA: I support the measure.

Mr. K.B. Bhavarlall: This is a very reasonable amendment. I support it.

Mr. G. BENN WHITE: Sir, in the first place I wish to support the principles underlying the amending bill. I feel that the insertion of the additional clause 'na' in sub-section (1) of section 60 of the Code of Civil Procedure, 1911, will clear up the long standing and vexed question as to the correct definition of the term 'labourer' in its reference to skilled and unskilled employees.

The effect of the bill, if passed by this House, will alleviate the conditions of life of a large number of workmen employed by the Mining Companies on the Kolar Gold Field, in that it appears clearly to provide for the exemption from attachment of wages and salary, not only of labourers and domestic servants, but also of all other employees to the extent of the first Rs.50/- and half of the remainder of their salary.

It does not appear clear, however, that the bill will have any immediate effect in that section 3 lays down that the amendment made by section 2 shall not have effect in respect of any proceedings arising out of any suit instituted before 1st July 1939. I beg to submit, sir, that as the amending bill now before the House is but a clarification of the Code of Civil Procedure (amendment) Act of 1938, amending section 60, the retrospective effect should be as from 1st July 1938, the date of the 1938 amendment. Should this suggestion be impracticable, the wording of section 3 of the present amending bill should be suitably revised in such a way as to conform with the stated objects and reasons for the amendment, that is to give early relief to judgment debtors whose wages are now subject to attachment.

I congratulate the Government on their public spirited action in seeking to introduce legislation which is for the benefit of workmen, and I feel sure that the effects of this bill if it becomes law be of the greatest benefit and will be received universally with satisfaction.

Dharmapravartha M.L. NAGAPPASETTY: (speaking in Kannada)

Mr. N. MADHAVA RAU: From the speeches made here, it is evident that all sections of the House support the bill subject to scrutiny by the select committee.

Mr. PRESIDENT: The question is:

"That the bill published under rule 8 of the Rules of Business, be read in Council"

The motion was adopted.

(b) Motion that the bill be referred to a select committee.

Mr. N. MADHAVA RAU: Sir. I beg to move that the bill be referred to a select committee consisting of the following persons:

Mr. G. Benn White,
Mr. G. Ramanuja Iyengar,
Khan Bahadur Mahomed Abbas Khan,
Mr. H.B. Gundappa,
Dharmapravartha M.L. Nagappasetty,
Mr. N. Mirle Lakshminaranappa,
Mr. M.S. Ramachendra Rao,
Mr. C.Subrahmanya Aiyar, and
Myself.

Mr. C.SUBRAHMANYA AIYAR: I beg to second the motion.

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Mr. PRESIDENT: The question is:

" That the bill be referred to a select committee consisting of the persons mentioned by the mover."

The motion was adopted.

## 14. WORKMEN'S COMPENSATION (AMENDMENT) BILL.

(a) Motion that the bill, published under Rule of the Rules of Business, be read in Council.

The FIRST MEMBER ( Rajamantrapravina N. Madhava Rau): Sir, I beg to move

Mr. D.H. CHANDRASEKHARAIYA (speaking in Kannada): This is a necessary piece of legislati I support it wholeheartedly. But I have to bring to notice that in places where this Act is in force wage-earners and coolies are feeling some difficulty in the matter of obtaining compensation I understand that at present the Deputy Commissioner is the officer appointed to ~~give~~ award compensation. In obtaining the compensatio these labourers have to satisfy the intermediaries such as clerks and others.

Mr. N. MADHAVA RAU: It is not the object of this bill. ~~It~~ No point does not arise ~~from~~ connected with this bill.

Mr. D.H. CHANDRASEKHARAIYA: Because the bill is amended, I request that Government be pleased to pay attention to this matter and see that this bill will really be helpful to the coolies.

Mr. T. RAMACHANDRA: In supporting the measure, I wish to place one suggestion for the consideration of the Government. It has been found from experience that silicosis takes a long time to have its effect upon the human system. Even in South Africa it is felt whether those working in the mines could at all become under silicosis. Because it does not show itself at once. I hope that when the measure becomes law, Government would have such medical convenience as would be able to find out from workmen's constitution what type of silocisis they are suffering from in order to enable them to get the benefit of the measure. I congratulate the Government in having brought forward this amendment to the bill.

Mr. PRESIDENT: The question

" That the bill, published under rule 8 of the Rules of Business, be read in Council".

The motion was adopted.

(b) Motion that the Rules of Business and Standing Orders be suspended and that the bill be taken into consideration at once without reference to select committee.

Mr. N. MADHAVA RAU: I beg to move that the Rules of Business and Standing Orders be suspende and that the bill be taken into consideration at once without reference to select committee

Mr. P. H. KRISHNA RAU: I beg to second the motion.

Mr. PRESIDENT: The question is

" That the Rules of Business and Standir Orders be suspended and that the bill be taken into consideration at once witho reference to select committee."

The motion was adopted.

c) Motion that the bill be passed.

Mr. N. MADHAVA RAU: I beg to move that the bill be passed.

Mr. P.H. KRISHNA RAU: I second the motion.

Mr. PRESIDENT: The question is:

" That the bill be passed."

The motion was adopted.

7. STATEMENT OF THE GENERAL PRINCIPLES OF THE BILL TO AMEND THE CODE OF CIVIL PROCEDURE.

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THE SECRETARY TO GOVERNMENT, GENERAL DEPARTMENT (Mr. A.A. Appaji Gowda) explained the general principles of the Bill as follows:--

(Here enter the printed statement)

Mr. V. VENKATESAIYA observed that like anybody else the labourer also deserved to be secured of a minimum income in spite of Court attachment in order to be able to keep his body and soul together, and to provide bread for his dependants. From this point of view he said that the amendments proposed were v desirable and he therefore supported the proposed legislation.

Mr. A.N. RAJA RAO generally supported the general principles of the Bill, but he thought that with regard to amending section 60 of the Code of Civil procedure specific exemption should be provide for in the case of cooperative societies. Many middle class men and petty officials of Government were indebted to cooperative institutions and unless exemption was given in the case of cooperative institutions they would be deprived of the existing scope for recovering their dues. Otherwis the societies would refuse to grant loans to such persons with the result that the latter would in futu be disabled from obtaining loans anywhere.

Messrs. S. RAMAPPA AND M. SUBBIAH also agreed in this view. Mr. Subbiah added that at the present time a number of Joint Stock Concerns were failing, and that the same fate would overtake the Cooperative institutions also unless some special concession was extended in their case.

Mr. M. SUBBIAH then raised the question whether the limit of Rs.50/- proposed to be exempted from attachment referred to the gross pay drawn by any employee or the net amount drawn after meeting insurance premia or Provident Fund subscription e Personally he felt that it was the gro

that should be taken into consideration for such purposes. Otherwise it was possible that a particular debtor went on insuring further as increments were earned with a view to safeguarding the interests of his family to the detriment of the interests of the creditor. He would even go so far as to suggest that the limit of exemption might if necessary be raised from Rs.50/- to Rs.60/- rather than agreeing that the amount to be exempted from attachment should relate to the net pay drawn.

Mr. V.V. [illegible] IYER did not think that any exemption was called for at all in the case of cooperative societies.

This was also the opinion of Mr. S.C. Mallick who said that considerations of loyalty to the institutions required that every member of a society should promptly repay the loan instalments as they fell due. Besides any special concession shown in the case of members of cooperative institutions would savour of distinction which was certainly not the intention of the legislation under discussion.

Mr. R.G.K. MORRISON -- There seems to be some misapprehension about the objects of this amendment. As one who represents the mining industry, which is engaging a large volume of labour, whose interests are close to our hearts, I should like to point out a few facts, as to where hardship will be created under the existing conditions. The word labour -- skilled and unskilled -- is still open to numerous interpretations. and at the present time there exist in the mines something to the order of 400 different classifications which in days gone by had been classified on the basis of skilled and unskilled labour. You have the case of a youth of 15 or 16 starting as a fitter. He gets a nominal pay which gradually rises with his service until he passes on to the classification of a third class workman. His pay is eight annas and his job is very tight. Yet he is classed as a skilled labourer. It is obvious that this amendment to the Code of Civil Procedure, which proceeds on the basis of salary rather than on the arbitrary classification of skilled and unskilled labour. is more rationa I submit that in such cases, which exist in all large industrial organisations. classifications of labour on the salary basis is more sound than classification as skilled and unskilled. I have great pleasure in supporting the amendment.

Mr. J. ASWATHANARAYANA RAO supported the general principles of the Bill in question in so far as (i) affording to skilled labour the same concessions as were being enjoyed by un-skilled labour and (ii) extending to private employees the concession which was being enjoyed by Government officials in the matter of exemption from salary attachment, were concerned. He was not sure of all that was meant by 'etc.,' in the penultimate paragraph of the statement of general principles. He agreed with th previous speaker that any limit of exemption from attachment should refer to the gross pay and not to the net pay so that while the interests of a debtor' family were secured, the creditor would not be duped. He also suggested that it be made clear whether mastries for example, who were not regular employees of anybody, but petty contractors should be exempted from attachment and if so, to what extent. With regard to the question of allowing any special concession to cooperative institutions, he also thought that there was not any necessity to treat such societies as in any way different from other creditors.

Mr. KHAJI SYED YUSUFF SAHIB supported the Bill in view of the question of equal treatment to skilled and unskilled labourers. With regard however, to cooperative societies, he was strongly of opinion that no society could render succour to its needy members unless special exemptions were allowed in its case. He was suprised that the previous speaker should have placed cooperative societies on a par with the private creditors when there was an outstanding difference between the two in that in the case of a society both creditors and debtors

subscription to Provident Fund recognised by Government, deductions for which appear in the salary Bills, should be definitely excluded for purposes of attachment by Civil Courts.

He did not believe that the question of exemption to cooperative societies was very relevant to the amendment under discussion because whatever action was taken in consonance with the proposed amendment would apply equally to cooperative Societies as well as other creditors. He did not believe that the apprehension expressed by Mr. A.V. Rama Rao was justified, namely that cooperative societies would refuse membership or refuse loans to their members unless special exemption was given in their case. After all societies granted loans to their members only after the latter commanded the confidence of the former and not so much because the salaries could be attached. The Code of Civil Procedure was meant to apply to everybody so that it would not be fair to exclude any member particular class of persons from its operation.

Mr. L. SUBBIAH suggested that it would be desirable to make this attitude of Government clear instead of leaving it for the interpretation by different Courts of Law.

Mr.N. MADHAVA RAU replied that the intention would become patent to anybody because all items meant to be exempt from attachment would be declared as such by Government in the shape of a notification to be duly published in the official gazette.

Mr. ITTURI SAMYANGI RAMIAH PETTY remarked that when all kinds of protection were being afforded to debtors, the Government were not taking

action to safeguard the interests of creditors.

Mr. N. MADHAVA RAU replied that it was with the object of reconciling the two interests that the proposed legislation was contemplated.

Mr. KOTHURI SAMBANGI RAMIAH CHETTY stated that he would prefer a law being enacted to the effect that no creditor should lend and that no borrower should incur debts.

Mr. CHAMPOOR PAPANNA did not agree with the proposed law, but remarked that it was unfortunate that retrospective effect was being given to all the special legislations which were being enacted in the interests of debtors.

<u>The general principles of the Bill were then accepted by the House.</u>

PROCEEDINGS OF THE GOVERNMENT OF HIS HIGHNESS

THE MAHARAJA OF MYSORE.

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ORDER No.P. 5333 Leg'41.39-1

Dated Bangalore the 6th February 1940.

Ordered that the accompanying Act further to amend the Code of Civil Procedure, 1911 which received the assent of His Highness the Maharaja, on the 30th day of January 1940 be published as Act No.IV of 1940, in the Mysore Gazette for general information.

By order,
Secretary to Government
Law Department.

To

The Compiler, Mysore Gazette, for publication in Part IV of the Gazette, in English and Kannada and for supply of spare copies as per Standing Orders. ~~Proofs should be sent to this office for approval before publication.~~

G. . S. VI.—s-III/1

**DRAFT.**

SUBJECT.....

.....

**Section.** Legis
**File No.** 41-39
**Serial No.** 1

*oceedings of the Government of*
*H. H. the Maharaja of Mysore.*

*Diary No. of letter replied to*.....

rder No. MS 333/Mec 1.

GENERAL AND REVENUE SECRETARIAT,

*he*.....*191*

*Date of issue*.....6/2/40.

*Signed by*.....Dpr: C. S. A.

Ordered that the accompanying.....Act
.....to amend the Code of
Civil Procedure, 1911.....
which received the assent of His Highness the Maharaja, on the.....30th
day of.....January..... 1914
published as ~~Regulation~~ Act No.....IV
1914, in the *Mysore Gazette* for general information.

May this be—

*Secretary to Government.*
for Law Department

(i) Printed?

(ii) Treated as a standing order?

(iii) Published in the "Gazette" English part?

(iv) Translated?

(v) Placed at the disposal of the Press?

(vi) Published in the "Gazette" Kannada part?

To

The Compiler, *Mysore Gazette*, for publication in Part IV of the Gazette, in English and Kannada and for supply of .....spare copies in English, and .....spare copies in Kannada to his office, and.....spare copies in English and.....spare copies in Kannada to the Curator, Government Central Book Depot, Bangalore. Proofs should be sent to this office for approval before publication.

Spare copies as per standing orders.

## NOTIFICATION.

*Order No. P.* 5333—*Legis.* 41-39-1, *dated Bangalore, the 6th February* 1940.

Ordered that the accompanying Act further to amend the Code of Civil Procedure, 1911, which received the assent of His Highness the Maharaja, on the 30th day of January 1940, be published as Act No. IV of 1940, in the *Mysore Gazette* for general information.

C. SUBRAHMANYA AIYAR,
*Secretary to Government,*
*Law Department*

## ACT No. IV OF 1940.

### The Code of Civil Procedure (Amendment) Act, 1940.

(*Received the assent of His Highness the Maharaja, on the 30th day of January* 1940.)

WHEREAS it is expedient further to amend the Code of Civil Procedure, 1911, for the purposes hereinafter appearing; It is hereby enacted as follows:—

Short title.

1. This Act may be called the Code of Civil Procedure (amendment) Act, 1940.

Amendment of section 60, Act III of 1911.

2. In the proviso to sub-section (1) of section 60 of the Code of Civil Procedure, 1911—

(*a*) In clause (*h*) delete the words 'and salary, to the extent ..... ..... ..... of such salary' and insert the following as clause (*ha*):—

"wages and salary of all employees other than labourers and domestic servants, to the extent of the first fifty rupees and one-half the remainder of such salary;"

(*b*) in the proviso under clause (i), for the words such salary liable to attachment' substitute the words wages and salary liable to attachment under clauses (*ha*) and (i);

(*c*) in *Explanation* 1, add item (*ha*) after item (*h*) and omit the words 'and in the case of salary other than.....it is actually payable;'

(*d*) for *Explanation* (2) substitute the following:—

"in clauses (*ha*) and (i) 'wages and salary' mean the total emoluments calculated on a monthly basis, excluding (i) deductions declared by Government by notification in the official Gazette to be exempt from attachment, and (ii) any allowance declared exempt from attachment under the provisions of clause (*k*), derived by a person from his employment whether on duty or on leave."

MIRZA M. ISMAIL,
*Dewan.*